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STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
BOARD MEETING

JOE SERNA JR., CAL EPA BUILDING
CENTRAL VALLEY AUDITORIUM
1001 I STREET, SECOND FLOOR
SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 15, 2001
9:36 A.M.

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Certified Shorthand Reporter
License Number 8751

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

A P P E A R A N C E S

BOARD MEMBERS PRESENT:

LINDA MOULTON-PATTERSON, Chair
DAN EATON
STEVEN R. JONES
JOSE MEDINA
MICHAEL PAPARIAN

STAFF PRESENT:

MARK LEARY, Interim Executive Director
KATHRYN TOBIAS, Chief Counsel
ELLIOT BLACK, Legal Counsel
MICHAEL BLEDSOE, Legal Counsel
DEBORAH MCKEE, Board Assistant
YVONNE VILLA, Board Secretary

ALSO PRESENT:

EDNA WALZ, Office of the Attorney General

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 P R O C E E D I N G S

2 --oOo--

3 BOARD CHAIR MOULTON-PATTERSON: Good morning and
4 welcome back to our August meeting. Today when we get
5 started we'll be taking up items eighteen to the end of
6 the agenda.

7 Before we start we'll ask the members for
8 ex-partes.

9 Mr. Eaton.

10 BOARD MEMBER EATON: I'm current, thank you.

11 BOARD CHAIR MOULTON-PATTERSON: Thank you.

12 Mr. Jones.

13 BOARD MEMBER JONES: John Cupps.

14 BOARD CHAIR MOULTON-PATTERSON: Thank you.

15 Mr. Paparian.

16 BOARD MEMBER PAPARIAN: None.

17 BOARD CHAIR MOULTON-PATTERSON: And then we need
18 to call the roll.

19 And I have none.

20 Will the secretary call the roll, please?

21 BOARD SECRETARY VILLA: Eaton?

22 BOARD MEMBER EATON: None incurred.

23 BOARD SECRETARY VILLA: Jones?

24 BOARD MEMBER JONES: Aye or here.

25 BOARD SECRETARY VILLA: Medina?

1 (Not present.)

2 BOARD SECRETARY VILLA: Paparian?

3 BOARD MEMBER PAPARIAN: Here.

4 BOARD SECRETARY VILLA: Moulton-Patterson?

5 BOARD CHAIR MOULTON-PATTERSON: Here. Ms.

6 Tobias, do we need to do ex-parte again, or is it okay?

7 LEGAL COUNSEL TOBIAS: Have we started today?

8 BOARD CHAIR MOULTON-PATTERSON: Well I reversed
9 the order.

10 CHIEF LEGAL COUNSEL TOBIAS: It doesn't make any
11 difference what order we started in.

12 BOARD CHAIR MOULTON-PATTERSON: Before we start
13 I'd like to ask Mr. Leary to put an agenda item on for
14 September to go over, to formalize Board procedures that
15 we worked on. I think all the Board members have seen
16 them, at least in rough form, and we'll discuss that
17 publicly.

18 And then also calendar dates for next year and
19 meeting dates, and see that we have concurrence with the
20 members.

21 INTERIM EXECUTIVE DIRECTOR LEARY: Will do,
22 Madam Chair.

23 BOARD CHAIR MOULTON-PATTERSON: Thank you.

24 Okay. Then we'll start right out with number 18, Ms.

25 Nauman.

1 MS. NAUMAN: Good morning, Board members, Madam
2 Chair. Julie Nauman with the Permitting and Enforcement
3 Division.

4 Item 18 is consideration of a new solid waste
5 facility permit for Environmental Reclaiming Solutions,
6 Inc. in Yolo County.

7 Beatrice Poroli will make the presentation.

8 MS. POROLI: Good morning. For the record, my
9 name is Beatrice Poroli with the Permitting and
10 Inspection Branch.

11 This item was heard at the June 19, 2001
12 meeting, excuse me, 2001 Board meeting. The Board took
13 no action because the applicant waived the time until the
14 August Board meeting to allow the Yolo County Planning
15 Commission to act on the conditional use permit.

16 The Yolo County Planning Commission met on
17 August 9th, 2001 and voted to continue the item until
18 September 13, 2001 meeting to allow the operator time to
19 complete the necessary paperwork.

20 The proposed permit is to allow the following:

21 Increase the amount of green material on site
22 from 10,000 cubic yards to 50,000 cubic yards initially,
23 and eventually increase the volume to a level of up to
24 100,000 cubic yards. And to increase the permitted area
25 from 20 to 56 acres.

1 As discussed in the agenda starting on page
2 18-5, the facility has been operating in violation of the
3 Public Resource Code Section 44014(B), terms and
4 conditions of the July, 1998 registration permit.

5 The facility has been operating under a notice
6 and order since November, 1998.

7 Upon Board concurrence with the proposed permit
8 and the subsequent issuance by the LEA, the violation
9 will be corrected. As is indicated on page 18-5 of the
10 agenda item, Board staff have determined that all of the
11 requirements have been met.

12 Staff reviewed the proposed permit and
13 supporting documentation and have found them to be
14 acceptable for consideration by the Board.

15 In conclusion, staff recommend the Board adopt
16 solid waste facility permit decision number 2001-183,
17 concurring in the issuance of a solid waste facility
18 permit number 57-AA-0029.

19 The operator and the LEA are present to answer
20 any questions you may have.

21 BOARD CHAIR MOULTON-PATTERSON: Thank you very
22 much.

23 Any questions from the Board? Mr. Paparian.

24 BOARD MEMBER PAPARIAN: I'm sorry, did you talk
25 about the conditional use permit they were going to get

1 last week?

2 MS. POROLI: For that item they voted to
3 continue that until the September 13th committee meeting,
4 I mean commission meeting. They wanted the operator,
5 from my understanding they needed a signature on the lien
6 to complete the process.

7 The operator can come up and explain more
8 details of what they needed to do and by when.

9 BOARD MEMBER PAPARIAN: Okay. But as far as we
10 know it's not because of concerns that might lead to them
11 not getting a conditional use permit?

12 MR. DE BIE: Mark de Bie with Permitting and
13 Inspection.

14 Just a clarification, they do have a conditional
15 use permit presently. The county was going through a
16 process of potentially rescinding that because of the
17 bond issue that the operator was having difficulty
18 complying with.

19 Our understanding is that they're working,
20 they're continuing to work through that process, they're
21 putting up the property, and again the operator can give
22 you much more detail. But the property is being
23 involved, and there's a final signature that's required
24 to complete the paperwork. And I did hear anecdotally
25 that the person that needs to sign that is in Alaska, so

1 there may be some difficulty in getting that signature in
2 a timely manner.

3 It's also our understanding that the planning
4 commission did vote this month to decide not to rescind
5 the CUP, but then they also did continue the matter until
6 September so that the paperwork could be completed.

7 (BOARD MEMBER MEDINA ARRIVED.)

8 BOARD MEMBER PAPARIAN: And then again, as far
9 as you're aware it's just this financial issue that
10 they're concerned about at this point?

11 MR. DE BIE: That's our understanding, that's
12 the only outstanding issue.

13 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
14 you. I just wanted to interrupt for a moment to reflect
15 Mr. Medina is here.

16 Do you have any ex-parte, Mr. Medina?

17 BOARD MEMBER MEDINA: No, I do not.

18 BOARD CHAIR MOULTON-PATTERSON: Thank you.
19 Okay.

20 Any other questions, concerns on this one? Mr.
21 Eaton.

22 BOARD MEMBER EATON: Just, Mr. de Bie, if for
23 some reason their conditional use permit should be
24 revoked subsequent to an action by this Board, what would
25 be the status of the permit at that time to operate.

1 I mean obviously without a conditional use
2 permit they can't operate, but what is the operation of
3 law as it relates to our permit? It's just held in
4 abeyance until they do come back into compliance and do
5 the CUP, or do we reopen it?

6 MR. DE BIE: On paper they would have a permit
7 to operate, but as you indicated, without the CUP they
8 would be prevented from doing that. The, there is no
9 strong linkage between the solid waste facility permit
10 and the need for a CUP, they're fairly independent.

11 If they, if the CUP was rescinded and the
12 facility was not being operated, even though they had an
13 operating permit, we would encourage the LEA to
14 investigate the facility, perhaps through a permit review
15 process, to determine what the future of that site might
16 be. And through that process address the solid waste
17 facility permit, potentially revising it to reflect the
18 current situation, or potentially suspending it or
19 revoking it, whatever is necessary. But it would be
20 through a process, it would not be automatic.

21 BOARD MEMBER EATON: Is there any obligation on
22 the part of the LEA to inform us if their conditional use
23 permit was revoked? Or is it something that we can seek
24 from the LEA to advise us? I mean because sometimes with
25 as many pieces of business that are going on in your

1 area, you're always looking forward and sometimes, you
2 know, the inventory or the task can be put there.

3 Is there a way we can, separate and apart from
4 we can't obviously condition the permit, that's for sure,
5 but that we could provide at least some indication to the
6 LEA that we would like, that you would like to, on behalf
7 of the Board, be kept informed of any action by the local
8 jurisdiction as it relates to the CUP so that we can go
9 and do what's necessary?

10 MR. DE BIE: I think we have a very good
11 understanding now with the LEA. So what I think, what I
12 would propose doing is putting that request in writing to
13 the LEA and, so they'll have it for our records and their
14 records so that we have a copy of it.

15 BOARD MEMBER EATON: Okay, great. Thank you.
16 Thank you.

17 BOARD CHAIR MOULTON-PATTERSON: Okay. Any other
18 questions? Do we have a motion?

19 BOARD MEMBER JONES: Madam Chair.

20 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

21 BOARD MEMBER JONES: I'll move adoption of
22 Resolution 2001-183 for consideration of a new solid
23 waste facility permit for Environmental Reclaiming
24 Solutions of Yolo County.

25 I would also, outside of the resolution, ask

1 staff to prepare that letter to give to the LEA.

2 BOARD MEMBER EATON: Second.

3 BOARD CHAIR MOULTON-PATTERSON: I'll second.

4 BOARD MEMBER EATON: Go ahead. No, go ahead.

5 BOARD CHAIR MOULTON-PATTERSON: Mr. Eaton

6 seconds. Mr. Jones moves, Mr. Eaton seconds resolution

7 2001-183.

8 Please call the roll.

9 BOARD SECRETARY VILLA: Eaton?

10 BOARD MEMBER EATON: Aye.

11 BOARD SECRETARY VILLA: Jones?

12 BOARD MEMBER JONES: Aye.

13 BOARD SECRETARY VILLA: Medina?

14 BOARD MEMBER MEDINA: Aye.

15 BOARD SECRETARY VILLA: Paparian?

16 BOARD MEMBER PAPARIAN: Aye.

17 BOARD SECRETARY VILLA: Moulton-Patterson?

18 BOARD CHAIR MOULTON-PATTERSON: Aye. Thank

19 you.

20 Number 19.

21 MS. NAUMAN: Item 19 is consideration of a

22 revised solid waste facility permit for the Calexico

23 Solid Waste Site located in Imperial County.

24 Leslie Reed will make the presentation.

25 MS. REED-NEWTON: Good morning. My name is

1 Leslie Newton-Reed, I'm with the Permitting and
2 Inspection Branch.

3 The Callexico solid waste permit has been revised
4 and updated from their original permit issued in 1979.

5 The proposed permit encompasses changes that are
6 already in effect, such as the change in property
7 boundary to 72.8 acres, and a defined disposal footprint
8 of 38 acres. And a change in permitted hours from 8:00
9 a.m. to 4:00 p.m. Wednesday and Saturday, less holidays.
10 Along with other changes that will provide for future
11 development, such as an increase in tonnage from 63 tons
12 per day to 150 tons per day.

13 On August 1st, 2001, Board staff performed a
14 pre-permit inspection of the facility. Staff noted that
15 one violation of the Public Resources Code will be
16 documented. This violation, PRC 44014(B), compliance
17 with terms and conditions of the permit, was specified in
18 the LEA's work plan and will be corrected by the issuance
19 of this revised solid waste facility permit.

20 As indicated on page 19-4 of the agenda item,
21 Board staff have determined that all requirements have
22 been met. Therefore, staff recommend that the Board
23 adopt Solid Waste Facility Permit Decision Number
24 2001-284, concurring with the issuance of Solid Waste
25 Facility Permit number 13-AA-004.

1 The operator and the LEA are here to answer any
2 of your questions.

3 BOARD CHAIR MOULTON-PATTERSON: Thank you very
4 much.

5 Questions, Board members?

6 BOARD MEMBER EATON: I just was wondering if --
7 I mean I have a question and I was trying to ask Mr.
8 Jones. But my understanding is we're going to double the
9 tonnage, correct? This is part of their trying
10 consolidation of all of their facilities, I understand.
11 But what I see here is a 72 acre parcel of land, of which
12 38 acres is going to be used for disposal, correct? I
13 mean that's roughly.

14 That 38 acres is unlined, and we're going to
15 double now the tonnage that goes into the unlined
16 facility. And I understand that, the water and stuff
17 like that, so at least based upon some of the experiences
18 you feel that there's no problem, that there would be,
19 either because of lack of water or that sort of thing,
20 correct?

21 MS. NAUMAN: Well recognizing it is an unlined
22 cell, I think what's happening here is you're just
23 accelerating the rate at which you build that cell.

24 BOARD MEMBER EATON: Right. Right.

25 MS. NAUMAN: It's not a lateral expansion.

1 BOARD MEMBER EATON: Right. Okay. Thank you.

2 BOARD CHAIR MOULTON-PATTERSON: Any other
3 questions? Mr. Jones, did you have one?

4 BOARD MEMBER JONES: No.

5 BOARD CHAIR MOULTON-PATTERSON: Mr. Medina?

6 BOARD MEMBER MEDINA: Yes, I notice that their
7 permit had not been signed.

8 BOARD CHAIR MOULTON-PATTERSON: Staff?

9 MR. DE BIE: Good observation, Mr. Medina. I'm
10 trying to wrack my brain here on timing of the
11 signatures. And I believe the final signature by the LEA
12 is placed by the LEA on the document when they issue the
13 permit.

14 Sometimes I do believe we do get permits with a
15 signature on them, but typically it's just the signature
16 name, and then the signature is inserted after the Board
17 concurs, and then the LEA issues.

18 BOARD MEMBER MEDINA: Also, on the compliance
19 history I notice that from January through June they had
20 six T and C violations, and six state minimum standard
21 violations. And in the text it says that the LEAs
22 perform a monthly inspection to verify that the operator
23 had corrected the problem. So can we anticipate that the
24 remainder of the year that they will not have a
25 reoccurring problem regarding the state minimum violation

1 standards?

2 MR. DE BIE: And again, a detailed search of the
3 record indicates that from '97 to '99 much of those
4 violations dealt with cover and intermediate cover as
5 well as drainage controls, and they did address those
6 several years ago.

7 The more recent state minimum standard
8 violations in 2001, reading the descriptions and the
9 inspection reports, deal with site security.

10 And I found it interesting that there was a
11 notation, and perhaps the LEA can give us more detail, on
12 the inspection report that indicated that the fence had
13 been torn down by the Border Patrol. So that's as much
14 as I know by reading the inspection reports, but perhaps
15 the LEA can tell us what's going on with the fence at the
16 site and the Border Patrol.

17 BOARD MEMBER MEDINA: And as we look at state
18 minimum standard violations, we look at the, at the
19 quantity of violations or is there some violations that
20 are more serious than others?

21 MR. DE BIE: We take all violations seriously.
22 And when we're, when staff is making a finding of whether
23 or not the site is in compliance, it's based on the last
24 inspection completed by both the LEA and the Board staff.
25 So it's a, it's a particular specific date in time that

1 we look at and say, were they in compliance on that date?

2 And if so, then we are able to make the finding.

3 Certainly if there's a history of ongoing
4 violations, you know, we're, during that inspection we're
5 assessing, you know, whether there's potential for that
6 to reoccur. Again, whether they've taken the steps to
7 avoid going into a violation situation.

8 But the way we come to a conclusion of whether
9 or not they're in compliance is looking at that specific
10 date and time of when that last inspection was done.

11 And the LEA is present if you wanted more detail
12 about that site security issue that's ongoing.

13 BOARD MEMBER MEDINA: And for example, again, in
14 1999 they had twelve state minimum standard violations.
15 When you have that large number of violations, do they
16 come under greater scrutiny? Does the LEA work closer
17 with that operator?

18 MR. DE BIE: I'm going to now pass it on to, to
19 the LEA and let you, let him explain his strategy in
20 working with the operator on these violations.

21 BOARD CHAIR MOULTON-PATTERSON: Yes, we invite
22 you to speak.

23 MR. LAMAR: Jeff LaMar with the Imperial County
24 LEA.

25 Yes, we worked very closely with the operator

1 to, over a period of time to bring them to compliance.

2 This last series of violations, and that was
3 strictly with site security, that was an issue with the
4 Border Patrol, and as you're aware, the Callexico landfill
5 resides right here near the border --

6 BOARD MEMBER PAPARIAN: Excuse me, is your
7 microphone on?

8 MR. LAMAR: It appears to be, yes.

9 BOARD MEMBER PAPARIAN: The little green light?

10 MR. LAMAR: Yes, it is.

11 BOARD MEMBER PAPARIAN: Okay.

12 MR. LAMAR: Are you having problems hearing me?

13 BOARD MEMBER PAPARIAN: A little bit, but go
14 ahead.

15 BOARD CHAIR MOULTON-PATTERSON: I think we need
16 maybe an extension for taller people.

17 MR. LAMAR: Possibly so. Okay, how about now?
18 Okay.

19 With this ongoing violation, which has been
20 corrected, there has been, the operator has met with us
21 and met with the Border Patrol, and they've come to an
22 agreement, and this should not be an issue any longer.

23 The operator is here to address any questions
24 you have pertaining to their agreement, but this is
25 something that we monitor and will continue to monitor,

1 as well as all activity relating to state minimum
2 standards and so forth.

3 BOARD MEMBER MEDINA: So the twelve state
4 minimum standard violations and the six state minimum
5 standard violations up to June of this year, they were
6 all related to site security?

7 MR. LAMAR: No, that's not correct. The, there
8 were some, as Board staff indicated, there were some
9 drainage violations, erosion violations that were
10 addressed, and those were a long period of time that we,
11 through a work schedule that we worked on to allow them
12 to correct those violations, to get them to have the
13 proper drainage plan in place to address that.

14 And then as well as there was a long-term
15 violation for the site security, and that was,
16 essentially what had to occur there was that there had to
17 be an agreement, there had to be some meetings with the
18 border patrol.

19 And once that was resolved we do not anticipate
20 any further issues with them.

21 BOARD MEMBER MEDINA: I see a lot of compliance
22 histories that are nowhere near as serious as these. So
23 when you have, over a period of a couple of years,
24 approximately 19 state minimum standard violations, do
25 you take greater concern over the situation or how do you

1 approach it?

2 MR. LAMAR: I think that we -- again, as an LEA
3 I think it's very important that you have to address
4 these state minimum standard violations. We have, if you
5 look at the history, you look at the work plans we've put
6 together, and working closely with the operator to
7 correct these violations and to ensure that they don't
8 reoccur. That's the day-to-day operation.

9 BOARD MEMBER MEDINA: Okay.

10 MR. DE BIE: In addition, Mr. Medina, whenever
11 there are two violations for the same standard in a row
12 we begin the process at the state level to include the
13 facility on the inventory list for sites that are in
14 violation of state minimum standards. And with that is a
15 timeframe to come into compliance. And if they are not
16 able to, then they're listed. And that kicks in a
17 requirement that the LEA shall put that facility on a
18 compliance schedule to get them in, into compliance.

19 So there is a, an increased level of scrutiny
20 with those ongoing violations.

21 BOARD CHAIR MOULTON-PATTERSON: Okay. Any other
22 questions?

23 BOARD MEMBER PAPARIAN: Madam Chair.

24 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

25 BOARD MEMBER PAPARIAN: A couple. The drainage

1 issues and so forth, I presume the Water Board has been
2 involved?

3 MR. LAMAR: That is correct. They have been
4 involved in that. That was one of the issues in working
5 on the compliance schedule four that, and that was in
6 concurrence with the Water Board to correct that, to
7 formulate a plan that they would be comfortable with as
8 well as the LEA.

9 So that yes, we worked closely with them on
10 that.

11 BOARD MEMBER PAPARIAN: Okay. Thanks.

12 BOARD MEMBER JONES: Madam Chair.

13 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

14 BOARD MEMBER JONES: I'd like to move adoption
15 of Resolution 2001-284, consideration of a revised solid
16 waste facility permit for the Calexico Solid Waste Site
17 in Imperial County.

18 BOARD CHAIR MOULTON-PATTERSON: We have a
19 motion.

20 BOARD MEMBER EATON: Second.

21 BOARD CHAIR MOULTON-PATTERSON: We have a motion
22 by Mr. Jones, seconded by Mr. Eaton to approve Resolution
23 2001-284.

24 Please call the roll.

25 BOARD SECRETARY VILLA: Eaton?

1 BOARD MEMBER EATON: Aye.
2 BOARD SECRETARY VILLA: Jones?
3 BOARD MEMBER JONES: Aye.
4 BOARD SECRETARY VILLA: Medina?
5 BOARD MEMBER MEDINA: Aye.
6 BOARD SECRETARY VILLA: Paparian?
7 BOARD MEMBER PAPARIAN: Aye.
8 BOARD SECRETARY VILLA: Moulton-Patterson?
9 BOARD CHAIR MOULTON-PATTERSON: Aye. Motion
10 approved.
11 Item 20 was pulled.
12 MS. NAUMAN: Item 21 is consideration of a
13 Revised Solid Waste Facility Permit for Sonoma Transfer
14 Station located in Sonoma County.
15 Erica Webber of P and I staff will be making the
16 presentation.
17 MS. WEBER: Good morning, Madam Chair and
18 members of the Board. I'm Erica Webber of the Board's
19 Permitting and Inspection Branch.
20 The Sonoma Transfer Station is a large volume
21 transfer station owned by the Sonoma County Department of
22 Transportation and Public Works, and is contract operated
23 by the West Sonoma County Disposal.
24 The proposed revised permit allow for the
25 following changes:

1 Construction of site improvements.

2 Separation of wood and yard waste from other
3 refuse on the tipping floor.

4 Initiate the traffic limit of 426 total vehicles
5 entering the site per day.

6 Increase in the daily maximum tonnage from 380
7 to 760 tons per day.

8 The local enforcement agency has certified that
9 the package is complete and correct and is in compliance
10 with the California Environmental Quality Act.

11 Board staff conducted a pre-permit joint
12 inspection with the local enforcement agency on April
13 6th, 2001. During that inspection a records check
14 revealed that the facility had exceeded their permitted
15 tonnage. The operation was in compliance with state
16 minimum standards. Concurrence in the issuance of this
17 permit will rectify the tonnage issue.

18 All required findings have been made.
19 Therefore, Board staff recommends that the Board concur
20 in the issuance of the permit as submitted by the LEA and
21 adopt resolution number 2001-286.

22 That completes staff's presentation.

23 BOARD CHAIR MOULTON-PATTERSON: Thank you, Ms.
24 Weber.

25 Any questions on item number 21? Do we have --

1 BOARD MEMBER JONES: Madam Chair.

2 BOARD CHAIR MOULTON-PATTERSON: -- a motion?

3 Mr. Jones.

4 BOARD MEMBER JONES: I'll move adoption of
5 Resolution 2001-286, Consideration of a Revised Solid
6 Waste Facility Permit for the Sonoma Transfer Station in
7 Sonoma County.

8 BOARD CHAIR MOULTON-PATTERSON: I'll second
9 that.

10 Motion by Mr. Jones, seconded by
11 Moulton-Patterson to approve Resolution 2001-286.

12 Please call the roll.

13 BOARD SECRETARY VILLA: Eaton?

14 BOARD MEMBER EATON: Aye.

15 BOARD SECRETARY VILLA: Jones?

16 BOARD MEMBER JONES: Aye.

17 BOARD SECRETARY VILLA: Medina?

18 BOARD MEMBER MEDINA: Aye.

19 BOARD SECRETARY VILLA: Paparian?

20 BOARD MEMBER PAPARIAN: Aye.

21 BOARD SECRETARY VILLA: Moulton-Patterson?

22 BOARD CHAIR MOULTON-PATTERSON: Aye. Motion
23 approved. Thank you, Ms. Weber.

24 Item 22 was deleted so that brings us to item
25 23.

1 MS. NAUMAN: Item 23 is consideration of
2 approval to formally notice proposed regulations for
3 compostable materials handling operations and facilities.

4 The Board will recall that this package has a
5 long history and has been before you several times
6 before.

7 Just so we have a little bit of introduction to
8 remind you that the purpose of these regs was to develop
9 and implement regulations that protect public health,
10 safety, and the environment, while at the same time
11 increase business opportunities through the diversion and
12 beneficial use of compostable organic materials.

13 Accordingly, this was a joint effort between the
14 P and E Division and the Waste Prevention and Market
15 Development Division. We were coming out of one of these
16 priority teams from our last strategic plan.

17 The last time you saw this item was in April.
18 And at that time we reviewed with you, and it's up on the
19 screen now, a little bit of the history of the
20 development of the composting regs and the various
21 iterations that they've gone through over the years;
22 starting back in 1995 when we dealt with inadvertent
23 composting, chipping, and grinding all being kind of
24 outside the purview of our composting regulations.

25 Then in 1997 kind of bringing chipping and

1 grinding in, but not bringing it in completely under the
2 purview of, of our regs in the sense of requiring a
3 permit.

4 So when it came to the current effort to update
5 the composting regulations, we really were focusing on
6 three key objectives, and that was to actually slot chip
7 and grinding. And what we mean by slotting is bringing
8 them into the permitting process and putting those
9 operations into one of our tiers, if you will, for what
10 type of permit they would require.

11 We're also looking for opportunities to simplify
12 the tiering for these kinds of operations, not
13 necessarily utilizing all of the four tier levels that we
14 normally utilize when we're looking at waste facilities.
15 And as I mentioned earlier, trying to balance market
16 development objectives with the need to increase
17 diversion, at the same time recognizing the need to
18 protect public health, safety, and the environment.

19 When we reviewed the package with you in April,
20 there were several comments made by interested parties
21 which led to your direction that we continue to engage in
22 dialogue and have a series of meetings with the
23 interested parties.

24 And we have done that. And we have done that
25 extensively. Over the course of the last couple of

1 months we've conducted eight meetings. A quick
2 calculation and I can tell you it's utilized about four
3 hundred staff hours to ensure that we were giving ample
4 opportunity to all stakeholders to come and meet with us
5 directly and during informal, roll up your sleeve,
6 workshop type sessions, where we felt that we really
7 examined all of the issues and all of the options, which
8 is really the purpose of the informal process.

9 And staff believes that we have completed the
10 informal process with this last series of informal
11 meetings with the interested parties, and are now ready
12 to ask for your approval to move into the formal process
13 where we can engage a wider group of interested and
14 potentially affected parties through that part of the
15 rulemaking process.

16 Before I turn it over to Jeff to talk about some
17 of the issues that we have addressed and explain to you
18 how we've addressed those in the package, I just also
19 wanted to indicate that we do have a memo back from the
20 Office of Environmental Health and Hazard Assessment,
21 which again I'll ask Jeff to give the details of when he
22 comes up.

23 But previously when we were talking about this
24 package in April, and Mr. Paparian had specifically asked
25 us to consult with them about some of the issues as it

1 relates to metals. And we indicated at the briefing that
2 we were awaiting their formal response to document the
3 discussions that we've been having with them. And I
4 believe you all have received a copy of that memo, and
5 for the record we'll indicate what they're telling us.

6 So with that, I'll turn it over to Jeff Watson
7 of our staff to go through some of the key elements of
8 the package and the issues that we've most recently been
9 addressing with the stakeholders.

10 BOARD CHAIR MOULTON-PATTERSON: Ms. Nauman, just
11 before you turn it over, you say four hundred hours of
12 staff time has been spent on this approximately.

13 MS. NAUMAN: Approximately.

14 BOARD CHAIR MOULTON-PATTERSON: And eight
15 workshops?

16 MS. NAUMAN: Eight working sessions.

17 BOARD CHAIR MOULTON-PATTERSON: And how long
18 have we been working on this process approximately?

19 MS. NAUMAN: This package dates back about, at
20 least four years.

21 BOARD CHAIR MOULTON-PATTERSON: Four years.

22 MS. NAUMAN: Now we've been, you know, a
23 concerted effort, well I, you know the staff has been
24 working on it longer than I've been with the Board to
25 give you the details of it, but this package was, you

1 know, moving along at the time I joined the Board over
2 three years ago, and we have had innumerable meetings
3 throughout the state, you know. And what I'm just
4 talking about now is just the most recent effort since
5 April.

6 But I know that the staff held I think nine
7 workshops around the state, actually what, a year ago,
8 eighteen months ago? Yeah.

9 So it has been a very intensive effort on our
10 part. Probably, except maybe for the 1220 regs, probably
11 the longest informal process we've gone through on the
12 rate packaging. That's why we feel that we've, you know,
13 we're ready to move on.

14 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
15 you, Ms. Nauman.

16 BOARD MEMBER 1: Madam Chair, may I ask a
17 question before they move on?

18 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

19 BOARD MEMBER JONES: Four hundred hours, I think
20 the transfer station regs probably took us longer than
21 that.

22 But that's the first time I've ever seen one of
23 these packages proposed with hours on it.

24 Have we, with the South Coast Air District now
25 starting PR 1133, how has P and E staff been working with

1 them and this reg package? I mean clearly AQMD and South
2 Coast may come up with a package that absolutely stops
3 composting in Southern California.

4 MS. NAUMAN: I'm aware of that, Mr. Jones. The
5 most recent dialogue we've had has actually been through
6 a series of e-mails over the last couple of days.

7 You may recall that this issue was raised, I
8 would say maybe six or eight months ago, our staff first
9 became aware of South Coast's interest in proposing some,
10 a rulemaking with respect to emissions, and the impact
11 that it might have on composting.

12 Our staff attended a working session at that
13 time. I think, I recall the Chair's office also being
14 involved in dialogue with them and encouraging them, and
15 I thought we had reached agreement that they would be
16 willing to work with us as they were examining these
17 issues.

18 I must admit that it came as a bit of a surprise
19 to me, because I've been a little bit out of the loop,
20 when we got an e-mail that said we now have some language
21 that we would like to talk with you about.

22 Our staff is part of a working group with South
23 Coast, and we've been in contact with them in the last
24 couple of days indicating that we, you know, very
25 strongly urge them to work with us and to not move too

1 quickly on this rulemaking.

2 Jeff and others have had more direct contact
3 with them and can give you more details.

4 BOARD MEMBER JONES: What they're proposing is
5 to just only allow in vessel composting. So if that's
6 all they're going to propose or allow, there isn't going
7 to be any composting in Southern California basically.

8 MS. NAUMAN: And we're very concerned about
9 that.

10 BOARD MEMBER JONES: And we have regulations
11 here that we're trying to put together to set a standard,
12 and whether it's four hundred hours or four thousand
13 hours, it's a moot point if the air districts take away
14 the oversight of composting facilities from the Waste
15 Board. And that's, in effect, part of what this is,
16 could end up being.

17 So it would seem to me that you've got a couple
18 of meetings that are scheduled with South Coast Air
19 District.

20 MS. NAUMAN: That's correct.

21 BOARD MEMBER JONES: If, I mean, I don't know,
22 people, I mean this is a huge issue. If they will not
23 allow composting except in vessel, then that material is
24 going to end up being ADC, or it's going to end up as
25 disposal as well as the manures and all the other

1 materials that those people were trying to compost.

2 So does it make sense to get a handle on where
3 this huge amount of material is and figure out how we're
4 going to deal with another agency that may put
5 restrictions on everything that we're doing here?

6 I mean this is critical. If there are no
7 outlets for this material in Southern California, we're
8 going to have to rethink an awful lot of what we're doing
9 with diversion programs and things like that because they
10 may not have an option because of the air district.
11 There may be no option other than disposal.

12 So four hundred hours set aside, this is a huge
13 issue.

14 MS. NAUMAN: And we're prepared to continue to
15 work on it. I'm going to ask if you would indulge us to
16 let Jeff comment on the discussions that he's had with
17 them and the relationship of this package to their
18 rulemaking.

19 MR. WATSON: Yeah, we have several things going
20 on. One thing is, the four hundred hours is just the
21 informal discussions, just the meetings, it's not the
22 review of the regs, it's just the meeting time for the
23 staff. So there's been a lot of time other than that, so
24 that was that one issue.

25 The other issue is we did meet with the South

1 Coast AQMD when they had the first informal session, it
2 was a public session. And we were fairly compelling in
3 our public testimony that you need to be very careful
4 about certain types of requirements that you would make.

5 At that time they were talking about carbon and
6 nitrogen ratios and acceptable ranges, and what we would
7 consider some highly onerous and restrictive language.

8 They promised us at that point in time, both
9 publicly and in private, that we would be consulted and
10 be part of a working group before any language, public
11 language was necessarily developed.

12 So we were caught a little off guard that there
13 was a working group meeting two weeks before a public
14 meeting, or even if that, that's going out with actual
15 language.

16 I've been in contact with Julia Lester who has
17 been pushing most of this through South Coast AQMD, and I
18 was not aware that they were going quite this far this
19 fast. So it is a problem. There is a communication
20 problem.

21 For the last year and a half we've been trying
22 to develop joint agency task forces around composting,
23 with a request from Cal EPA for California EPA with
24 appropriate individuals from the different Board
25 departments and offices.

1 So we're, we've been on this for a while. It
2 has grown very quickly, and we're very concerned that we
3 need to respond in a strong manner.

4 BOARD CHAIR MOULTON-PATTERSON: I would be --
5 excuse me.

6 Ms. Nauman, I would be very happy to meet with
7 the head of the AQMD on this issue and let them know our
8 strong concerns, so if we could set that up, along with
9 staff.

10 MS. NAUMAN: We would appreciate that.

11 BOARD CHAIR MOULTON-PATTERSON: Thank you.

12 BOARD MEMBER JONES: Madam Chair.

13 BOARD CHAIR MOULTON-PATTERSON: Yes, Mr. Jones.

14 BOARD MEMBER JONES: And the South Coast as well
15 as our Air Board?

16 BOARD CHAIR MOULTON-PATTERSON: Yes.

17 BOARD MEMBER JONES: Because right now the
18 proposed regs are --

19 BOARD CHAIR MOULTON-PATTERSON: Actually I meant
20 South Coast, but we can do AQMD also.

21 BOARD MEMBER JONES: I think we should do both,
22 and the secretary. Because right now the summary of the
23 proposed rules, by January 1st, 2003, dependent on the
24 type and size of the operation, active composting in all
25 facilities must occur in closed, aerated, static, or in

1 vessel piles, with contaminated air vented to emission
2 control systems.

3 I mean that is huge, that's monumental.

4 MR. WATSON: Yeah. The South Coast AQMD has
5 been under an incredible amount of pressure from U.S. EPA
6 because of their non-attainment status.

7 This is a proposal that they can give to the
8 U.S. EPA to, so to speak, get them off their back a
9 little. Whether they'll actually be able to implement
10 this or not I think is questionable for several reasons.

11 But the fact that it's been put out there
12 publicly does affect AQMDs, APCDs in the way that they
13 might respond to certain type of technical issues. So it
14 is more than huge, it may very well change composting in
15 the State of California for the rest of my life. So I
16 have a lot of, I think there's a lot of concern about
17 this.

18 Should it be a reason for us not going forward
19 with this package, or should we divert efforts from this
20 package? Actually I don't believe so. I believe this
21 package is actually consistent with the type of work and
22 the type of relationship that we have with AQMDs across
23 the state.

24 And it also is consistent with the requirements
25 of SB 675, and would also dove into some of the needs of

1 SB 88. So I believe this package is very important, and
2 as a matter of fact in lieu of this I think we should go
3 forward with this package in much more earnest; and also
4 make sure that the AQMDs and APCDs understand we are
5 serious about providing guidance and direction on how to
6 resolve these issues.

7 BOARD CHAIR MOULTON-PATTERSON: Thank you. Had
8 you had a chance to finish your regular report?

9 MR. WATSON: Actually I didn't even start it.
10 But if you guys are all in agreement that we should go
11 forward --

12 BOARD MEMBER JONES: Well no, I want to hear
13 about it.

14 BOARD CHAIR MOULTON-PATTERSON: Excuse me, Mr.
15 Jones. Yes, if you would go ahead with your report we'd
16 appreciate it.

17 MR. WATSON: Okay. The purpose of this, the
18 language that is now in the proposed package is
19 three-fold:

20 To define the requirements of non-composting
21 operations and facilities that handle compostable
22 materials, also known as chipping and grinding
23 operations, so define those permitting requirements.

24 To simplify the process needed to know what tier
25 you would be in regardless of what type of material

1 you're using.

2 And also to begin to define terms like minimize
3 that are in the current regulations that provide
4 ambiguity.

5 So those are basically what the, the things we
6 were supposed to do. This is a chipping and grinding
7 facility. They're not quite sure where they belong.
8 They do have temperatures in the pile that give us
9 authority, over 122 degrees, but they can move their
10 materials out in less than 48 hours. In fact, for their
11 business plan they do it in 24 hours.

12 Chipping and grinding. What we've done here is
13 we've basically done another rulemaking. We put chipping
14 and grinding that is really chipping and grinding into a
15 separate set of tiers outside of composting normal,
16 normal composting tiers. And so we have adjusted the
17 allowable time down to 48 hours, and they can get an
18 extension of LEA approval, I guess extension is good
19 enough.

20 There's exclusions for certain type of
21 operations that provide minimal risk, and also those
22 operations that are ag related.

23 We had a fairly complicated tiering system
24 prior, and so simplification is in order. Just a green,
25 the, where it says ag material, the half and the half,

1 has been impossible for people to interpret or
2 implement. Just three little cubes over there let alone
3 all the other ones that we have.

4 So what we've done is we've simplified it down.
5 We now have enforcement agency notification for the
6 lowest risk areas. Even that has been upgraded to
7 include a document called an OIMP, which we'll discuss a
8 little later, odor impact minimization plan.

9 So for all facilities, now it would be the new
10 enforcement agency notification has more requirements
11 than the previous registration tier, so it's basically a
12 hybrid of the registration tier.

13 The thing you get by having that is you don't
14 have monthly inspections with this, and we have come up
15 with a variable inspection that's more site specific.

16 The second thing is there's a compostable
17 materials permit. People didn't like having the name
18 Solid waste facilities permit associated with it, so we
19 have said that people that are composters have to have a
20 compostable materials permit. That now includes all
21 types of food waste. The only thing excluded out of that
22 are ag materials and certain green materials of small
23 enough volume and clean enough for cut material.

24 BOARD MEMBER EATON: How small?

25 MR. WATSON: For ag it can be, it's very large.

1 But for regular compost it's 12,500 cubic yards on site
2 of all types of material. That has to be understood,
3 that's prior, amendments, storage, all sorts of things.
4 That's all types of material. So it's actually below the
5 10,000 cubic yards for the most case that was the
6 registration tier now. So it's actually more stringent.

7 All the numbers that we've come up with are even
8 more stringent than the previous numbers. And the
9 requirements to be in the LEA notification are more
10 stringent. This is a facility that had a little problem
11 trying to figure out where it was, it was thought to be
12 chipping and grinding. We're thinking this was headed
13 more towards MSW like, which would be --

14 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

15 BOARD MEMBER JONES: Okay. This 12,500 cubic
16 yards, that goes into a notification tier?

17 MR. WATSON: If it's green material of less than
18 a half a percent of contamination, physical
19 contamination, then you could get 12,500 cubic yards of
20 total material on the facility; and notify the LEA of
21 your existence; provide them with an OIMP, odor impact
22 minimization plan; and then you could begin operations at
23 that point.

24 BOARD MEMBER JONES: And what's the LEA
25 oversight?

1 MR. WATSON: The LEA oversight? It depends on
2 what they're doing, if they're ag or non-ag.

3 But if they're non-ag there is an inspection
4 frequency that can be adjusted by the LEA, but there's,
5 it's, it can be monthly, it could be annual, it could be
6 anything.

7 BOARD MEMBER JONES: What about the ag?

8 MR. WATSON: The ag, what aspects of the ag?
9 Because there's several types.

10 BOARD MEMBER JONES: Tell me what the components
11 are of the ag.

12 MR. WATSON: If they're taking green material
13 in, for instance the ag, and this would be our most
14 concern, if they're taking urban derived green material
15 in, they're behaving very similarly to a commercial
16 material, so they have a limit also of 12,500.

17 BOARD MEMBER JONES: How about manure?

18 MR. WATSON: Manure would not have a limit for
19 ag material operations?

20 BOARD MEMBER JONES: They could?

21 MR. WATSON: An ag material could be an EA
22 notification and be composting manure at a very large
23 amount. And they would, conceivably the least
24 notification they could get as an EA would be annual
25 inspection prior to the annual application, because most

1 ag operations have a buildup to a certain point and then
2 they do allocation.

3 BOARD MEMBER JONES: And they're under
4 notification too?

5 MR. WATSON: They could be under notification.
6 There is only one section of ag that wouldn't be, and
7 that's ag that takes all their own stuff, composts it on
8 site, and uses it on site. That's excluded currently
9 still.

10 BOARD MEMBER JONES: So we could have 12,500
11 cubic yards of manure in downtown somewhere, and it would
12 not be regulated by the LEA?

13 MR. WATSON: Yes, it would be regulated. That
14 facility would need to provide the LEA with notification
15 that they're doing it, they would have a certain
16 inspection frequency that the LEA would set, and they
17 would have to provide an odor impact notification plan to
18 have that facility there.

19 And I venture to say that that odor minimization
20 plan would be fairly extensive if it were down in L.A.

21 BOARD MEMBER JONES: And the requirements on the
22 LEA to inspect would be?

23 MR. WATSON: I'm, I don't remember exactly, but
24 it's less than a month. It could be less than monthly,
25 but he could require --

1 BOARD MEMBER JONES: What is the least that
2 you're requiring him to do?

3 MR. WATSON: I believe, I believe it would be
4 annually would be the least in the EA notification.

5 BOARD MEMBER JONES: Once a year.

6 MR. WATSON: Would be the least required. But
7 that's again up to the LEA. I doubt, as a matter of fact
8 I know for a fact that the LEA in L.A. County would be
9 doing more than monthly inspections, and they have the
10 budget to do that.

11 BOARD MEMBER JONES: If the AQMD rule holds,
12 does that mean all of that manure then goes in vessel?

13 MR. WATSON: Yes, in vessel or enclosed.

14 BOARD MEMBER JONES: Or in a dump or in a
15 landfill.

16 MR. WATSON: Or on the side of the road.

17 BOARD MEMBER JONES: Okay.

18 BOARD CHAIR MOULTON-PATTERSON: Any other
19 questions before we go to our public comments?

20 MR. WATSON: Actually I have a couple more --

21 BOARD CHAIR MOULTON-PATTERSON: Oh, you're not
22 finished, I'm sorry.

23 MR. WATSON: A few more slides and we'll get
24 through this.

25 BOARD CHAIR MOULTON-PATTERSON: Sorry about

1 that, Mr. Watson.

2 MR. WATSON: We wanted to provide in this 12,500
3 cubic yards an opportunity for start-up green facilities
4 that would have the least amount of oversight, provide
5 them an opportunity to operate.

6 What we have found is very few operations behave
7 the same way year after year. So an operation definitely
8 needs a shakedown period, and if we keep 'em small enough
9 we can have people starting up and figuring out how they
10 need to do what they need to do and not becoming
11 unmanageable.

12 This is a facility of food waste. Food waste
13 has been a big topic in this particular, this is Northern
14 L.A. food waste, it heads out of county for further
15 processing.

16 The food material has a higher, in this package
17 can have a lot higher contamination level than the
18 green. All food material needs to be put in a
19 compostable permitted facility. So that means that it
20 would go follow the same full solid waste facility type
21 process that you would use, all food material. There are
22 people who object to this.

23 We wanted to also increase some ag
24 opportunities. This is material from Sacramento County
25 going to a Stanislaus facility, seventy something miles

1 away is where some of Sacramento city's green waste goes
2 for processing. The majority of this material is used by
3 ag.

4 We wanted to encourage this type of stuff. We
5 didn't want to necessarily want to encourage it going
6 seventy something miles because there's plenty of ag land
7 between here and there, but we wanted to give an
8 opportunity for some higher volumes.

9 There is a danger that we're looking at and we
10 will be continuing to look at in the formal rulemaking
11 about how much material could go on a facility without us
12 knowing about it. Many people don't even believe that
13 they need to give us a notification even though they
14 would be in our EA notification. So an implementation
15 issue comes out of this.

16 These are odor control facilities at the
17 Griffith Park. This would be one of the non-permitted
18 types of, if the AQMD rule, South Coast AQMD goes
19 through. This is where they do, they suck the air
20 through and put it through a biofilter, but it's not
21 enclosed. It would require an enclosure over the top of
22 this. Okay.

23 Odor, there is, it seems like the most important
24 issue for sustained operations in the State of California
25 is odor, and that's what, where AQMD is not necessarily

1 coming from odor, they're coming from attainment
2 criteria.

3 For us, a site won't live if they have odor
4 problems. So we have now made a requirement that every
5 facility or operation in the State of California that is
6 not excluded provide us with an odor impact minimization
7 plan.

8 This is a facility that doesn't have an odor
9 impact minimization plan.

10 The minimum standards we've improved. We did
11 not have a training minimum standard prior. We've made
12 the training minimum standard pretty much analogous and
13 parallel to the landfill.

14 Currently in this revision there is a twenty
15 hour which we are anticipating, a twenty hour requirement
16 which we are anticipating won't survive the 45 day
17 comment period. There are some other standards that we
18 changed. We provided a little additional clarification
19 on what's contamination, injury reporting, and other
20 things.

21 This is what we think we got from OEHHA's
22 written response, additional evaluation is necessary for
23 the 503s to be used for composting, and there are still
24 significant issues that exist, but they'd like to see
25 what happens with the National Academy of Science's

1 review of the current 503s before they do anything.

2 We would, staff would like to recommend that you
3 let us proceed for 45 day notice, understanding that that
4 would probably be 60 days before we'd even begin that 45
5 day notice, and we will be talking to the South Coast
6 AQMD, the paper industry, and several other industries in
7 the meantime to try to resolve any issues that they would
8 have that would preclude us from going into the 45 day.

9 Thank you.

10 BOARD CHAIR MOULTON-PATTERSON: Thank you.

11 Okay. Any other questions before we go to public
12 comments?

13 Mr. Paparian.

14 BOARD MEMBER PAPARIAN: Thank you. I'd just
15 like to follow up on the OEHHHA, that thing, because
16 that's the issue I brought up.

17 As I understand from reading their letter, there
18 are some efforts going on right now to take a look at
19 these types of standards to see whether, whether some
20 changes might be appropriate. I believe they refer to
21 the National Academy of Science's doing some additional
22 work on this.

23 At the same time they also pointed out that the
24 basis for this is in terms of what type of risk is
25 allowable, is different than OEHHHA or Cal EPA agencies

1 typically use, although they didn't take the next step to
2 see if that means that any of these would be changed or
3 not. And it had to do with the one in 10,000 risk versus
4 a one in a million risk, and I don't think we need to go
5 into the details of that here.

6 The thing that I think we don't know is whether
7 these type of contaminants are showing up in a big way in
8 compost in California. You know, I know that it's, from
9 information I've seen it's showing up in sewage sludge
10 because of industrial discharges to the sewage systems,
11 but we don't know if lead and mercury and selenium and so
12 forth, unless you have any other information --

13 MR. WATSON: Actually we did get some
14 information that we requested on both pathogen hits and
15 metals hits for facilities that have to do that type of
16 testing, and so far it's remarkably low, and both in
17 sewage sludge also, sewage sludge and composting
18 facilities.

19 So the metals concerns at this level, at the
20 level of the 503, we have no detect at lots of
21 facilities, no detect period. So whatever metal we were
22 supposed to, we'd be safe.

23 The problem is we do have, you know, facilities
24 that will hit it, you know, now and then, due to all
25 sorts of things. Mostly what we found is it's been lab

1 results problems. They've sent in a new test and it's
2 come back. So we'd like to look into that. This is not
3 a big problem in the state, it has long-range
4 environmental consequences with the type of sewage
5 sludge, co-composting that is inevitable because of the
6 type of population pressure we have in the state.

7 So it's timely in that manner, but there are
8 only a few states -- or excuse me -- a few jurisdictions
9 in the state where metals would be a problem. Next to
10 some of the old refineries, green waste does have higher
11 lead content because organic tetramethyl lead was used
12 for so many years it's organically gone through update,
13 so you do have that.

14 Other than that, a couple of chrome areas. We
15 don't have a lot of problems with metals in the State of
16 California.

17 BOARD MEMBER PAPARIAN: I mean I'm satisfied
18 with moving forward with the table that's in there with a
19 couple of suggestions.

20 One would be that when we get the information
21 back that, you know, it sounds like it might even be a
22 couple of years before we get some of this information
23 back that's referred to in the OEHHA letter, we take a
24 look and see if we need to update what we have.

25 And then at the same time I think maybe over the

1 next couple of years maybe we should do some samples of
2 some of the material that's out there just to confirm
3 that the levels are exceptionally low, you know.

4 MR. WATSON: That sounds very prudent.

5 BOARD MEMBER PAPARIAN: Yeah. And again, I
6 don't think that that holds us up at all, I think it's a
7 matter of when we get some new information we get things
8 and again confirm what's out there in the real world.

9 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
10 Paparian.

11 Mr. Chuck White, Waste Management.

12 MR. WHITE: Thank you very much, Madam Chairman.
13 Chuck White representing Waste Management.

14 I think, first of all, I would like to give a
15 tremendous word of appreciation to the amount of work
16 that has gone into this thing. There has been, I think
17 that four hundred hours even seemed like a low number
18 from the standpoint of the amount of time that's been
19 spent.

20 But I would also say that while we're much
21 closer, the package is better than it has been in the
22 past, I would urge that it's still not quite ready for
23 primetime in terms of a formal 45 day public notice.

24 And I would ask that the Board consider granting
25 us at least 30 more days to work informally with staff to

1 work out a few remaining bugs with the rulemaking
2 package.

3 I just heard, I thought I heard Jeff say it
4 even, it can't even go out for 45 days for about 60 days
5 anyways, so there's no reason this Board can't hold off
6 on making a decision to go out for public notice until
7 the next Board meeting which is less than thirty days
8 away. And the staff can still proceed with doing the
9 administrative work to prepare the package for 45 day
10 notice, there's nothing wrong with that, they just
11 wouldn't get your final blessing until we've had at least
12 one more chance to submit written comments, and one more
13 chance to meet with the staff to respond to the few
14 remaining areas of concern.

15 And those are, I have about five areas that I
16 would like to see an opportunity to work informally with
17 staff.

18 Number one is this public rule 1133. We just
19 got it for the first time this week. It was public
20 noticed by AQMD last Friday. There is a workshop next
21 week, I believe on the 22nd, kind of a working group
22 meeting, and then there's a full public workshop, I think
23 it's on the 5th of September. Both those dates are prior
24 to the next, your next Board meeting.

25 This would give you a tremendous amount of time

1 to work with AQMD staff, to sense what you need to do to
2 this package to hopefully maybe alleviate some of their
3 concerns or see if there is real problems between this
4 rulemaking package and the AQMD package.

5 So I would again, for reason number one, I would
6 urge you to use this opportunity to, before you go out to
7 authorize formal 45 day notice, to work with us, the
8 industry, and with the AQMD to clarify how PR 1133 would
9 interact with your proposed rule.

10 Number two is the whole paper and manure issue
11 that hasn't been resolved yet with respect to how much of
12 that can be contained in both compostable green materials
13 and in chipping and grinding materials. I think we're
14 going to be able to come up with a number providing some
15 reasonable limitations on these materials, but we still
16 don't have that yet.

17 Right now it looks like you can process up to
18 12,500 cubic yards of manure and green material under the
19 green waste chipping and grinding exemptions. So we
20 certainly urge that before the public notice go out, that
21 this issue be, if not finally resolved, a little more
22 closely resolved than it is at today's date.

23 And then the third issue is there's a definition
24 of disposal in the regulations, a brand new. Apparently
25 the attorney that wrote this was on vacation last week,

1 is now back, we have an opportunity to sit down and meet
2 with him and try to understand what they're trying to get
3 at. We think there's some real problems potentially with
4 that language that could restrict perfectly legitimate
5 land farming issues that involve the incorporation of
6 green material into soils.

7 And we would like to explore what the intent of
8 this language is and see if we can work out perhaps some
9 alternative language. But we haven't had a chance to
10 have that discussion yet.

11 Number four is the issue with respect to the
12 length of time chipping and grinding materials could be
13 left unhandled, whether it's 48 hours or seven days or
14 longer; and what are the conditions; which shorter or
15 longer amounts of time would be used to hold this
16 chipping and grinding material.

17 We do have some problems with the current
18 language that's proposed, but we think we can offer an
19 acceptable alternative. But again, we'd like to have the
20 opportunity to address that.

21 And then finally, the rulemaking package has a
22 number of, to us, unclear language. There's a few mis-
23 citations and apparently improper citations. And there's
24 details related to whether chipping and grinding
25 operations need to have an odor management plan if their,

1 if the material has been processed to the point where it
2 is no longer compostable. And what does no longer
3 compostable mean?

4 These are detailed issues, they're not huge
5 issues, but we'd like to again have the opportunity over
6 the next thirty days prior to the September Board meeting
7 to have a chance to meet with staff and work out some of
8 these before you authorize a 45 day public notice.

9 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
10 White.

11 MR. WHITE: Thank you very much.

12 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
13 White.

14 Next we have Matt Cotton.

15 MR. COTTON: Morning, Madam Chair, members of
16 the Board, Matt Cotton representing the California
17 Organic Recycling Council.

18 If I could, I would like to take one quick
19 second to editorialize as Matt Cotton, not representing
20 CORC or anyone else but myself. I never felt the
21 composting organics recycling industry under more threat
22 than it is today. This 1133, which Jeff and I attended
23 the work group over a year ago, I believe it was October
24 of last year we sat down with the AQMD folks and said,
25 "Please, please, do not give us prescriptive standards."

1 Let's have performance standards. They were fine on some
2 of these things, they went away, came back, and suddenly
3 we get an e-mail late on Friday saying, oh, by the way,
4 everything's going to be enclosed.

5 I want to make one point on that is that a very
6 literal reading of that rule, and I don't know if all of
7 you have seen the full package; but looking at the staff
8 report and the rule itself, it's not just composting,
9 you've got a very literal reading of that is if you have
10 chipped and ground material that at any time reaches 120
11 degrees, anybody in this room will tell you, Jeff, and
12 the industry folks will tell you that that happens coming
13 out of the truck that it needs to be enclosed.

14 It's not exactly clear what they mean by that,
15 but again, a literal reading means that all chipping and
16 grinding under this scenario may need to be enclosed. So
17 that takes devastating to a much higher level than just
18 the few composters.

19 It would be devastating to composters, don't get
20 me wrong. But if it does that to chippers and grinders,
21 and I think we looked at the staff report last month,
22 Scott Walker's report of something like four million tons
23 of green waste ADC being used, you know, that's some huge
24 percentage of the amount being processed in that area
25 obviously. So if all that needs to be enclosed, that

1 puts a major damper on things.

2 So I can't recommend highly enough that you take
3 this issue very seriously. I'm very delighted to see
4 that you're going to talk with the AQMD as well as South
5 Coast, and perhaps with Winton.

6 We'd like to on behalf of CORC and CRRC invite
7 the Chair or Bonnie or whoever can make it down to the
8 work group meeting, a number of us including L.A. Sands,
9 CORC, CRRC, a number of folks will be getting together
10 before the work group meeting in Diamond Bar to discuss
11 this.

12 I don't think we can hit this hard enough or
13 fast enough. South Coast tends to move very quickly and
14 without much, clearly in this case, without much
15 interplay with other agencies.

16 In the next few months, or really it's a matter
17 of time before you start hearing about some of the
18 persistent pesticides that are now being used, clopyrolid
19 may be coming down in composting.

20 Again, I've never felt this, the efforts we've
21 done in the last ten years to divert material's under
22 more threat than they are today. And I'm not going to
23 talk about ADC, but I think we've seen some progress on
24 that is which is very encouraging.

25 The staff report, you know, the composting regs,

1 I think I have a couple of points to make. I want to
2 echo what Chuck says, we reluctantly want to delay those
3 for another thirty days.

4 Part of that stems from some frustration how
5 quickly the draft came out of the worst problems that are
6 no fault of anyone's really, but people didn't get the
7 draft in a timely manner.

8 The new tiers I think are not well understood.
9 I think I personally again like the direction they're
10 going, but they're not well understood. We use the term
11 notification which means something to a lot of people,
12 but what we're talking about as notification in the
13 composting regs is something completely different.

14 Clearly CORC wants to encourage not discourage
15 food waste composting. We concur with a number of, not
16 all of but a number of Chuck's points that need some
17 cleanup.

18 And I think fundamentally in thirty days we can
19 achieve some clarity on some of these issues we hope.

20 So thanks very much.

21 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
22 Cotton, and please let us know when your meeting is that
23 you've like us to attend.

24 MR. COTTON: I'll submit comments on behalf of
25 CORC.

1 BOARD CHAIR MOULTON-PATTERSON: Thank you.

2 Denise Delmatier.

3 MS. DELMATIER: Madam Chair, members of the
4 Board, Denise Delmatier with NorCal Waste Systems.

5 And like the others who have preceded me, we'd
6 like to request a thirty day delay on the 45 day comment
7 period on this regulatory package.

8 We do have remaining concerns, have been in the
9 discussions with staff and the other stakeholders.
10 Unfortunately, in particular, we do have remaining
11 concerns regarding the inclusion of both manure and paper
12 in the definition of composting facility operation.

13 The definition of green material, in fact,
14 excludes both of those items, but then when you look at
15 the very next definition of operation or facility, it's
16 added right back in. So we have concerns regarding food
17 contaminated, food waste contaminated paper in the
18 inclusion of composting facility and operation.

19 At our request, and we do appreciate Board
20 staff's efforts in this regard, and obviously we've
21 participated in a number of discussions and workshops
22 over the past few months, but at our request most
23 recently the paper industry was invited to participate in
24 these discussions. And they just entered the fray, if
25 you will, have not had a chance to review and respond to

1 the latest package which included these changes that I
2 just talked about.

3 We are in discussions with them. We do believe
4 that we will be able to sit down with, we know we will be
5 able to sit down, we've worked with them for years, and
6 come to some sort of conclusion, resolve as far as how to
7 address paper in a notification tier that's contaminated
8 with food waste.

9 So we along with the paper industry believe that
10 we can find resolve within a thirty day delay on the 45
11 day formal comment period.

12 We are one of the largest composters in the
13 state, and we will continue to grow that business with
14 the addition of food waste composting, which is the next
15 horizon for the composting industry. And we certainly
16 want to make sure that that composting industry, like
17 CORC, is not harmed in the process inadvertently through
18 regulations that don't adequately address protection of
19 public health, safety, and the environment.

20 Additionally, we are one of the largest paper
21 recyclers in the state and, as such, we want to make sure
22 that these compost regs do not inadvertently harm the
23 flow of, stream of good recycled paper to the, along with
24 the paper industry to the paper recycler. So we've got
25 double concerns here from both a compost perspective as

1 well as a paper recycling perspective.

2 Now with the latest barrage from South Coast on
3 proposed public rule 1133, I just can't imagine that we
4 wouldn't want to take some time here to make sure that we
5 do it right and that we don't go out with a regulatory
6 package that isn't quite fully baked yet, and we urge a
7 thirty day delay.

8 BOARD CHAIR MOULTON-PATTERSON: Thank you, Ms.
9 Delmatier.

10 Larry Sweetser.

11 MR. SWEETSER: Thank you, Madam Chair and Board
12 members. My name is Larry Sweetser on behalf of the
13 Environmental Services Joint Powers Authority, 21 member
14 rural counties.

15 And we appreciate the efforts that have gone
16 into this project, both on staff and also the invitations
17 we've gotten to participate.

18 Our biggest issue has been and continues to be
19 the slash issue. I provided information to the Board
20 members, and we were hoping to get that in the draft
21 version, but I think we'll be able to get it through the
22 process.

23 And that's the issue we've been most concerned
24 about because these slash piles exist throughout the
25 rural counties, have been for numbers of years, no

1 problems. There is very little compostables in there.
2 And I know the discussion is focused on whether they go
3 to temperature or not; and they don't as a whole, maybe a
4 portion there, and that's why we're trying to seek
5 explicit exclusion from these regulations for these piles
6 because they do not have any problem. But to put them
7 under the regulations would be a major issue and probably
8 stop that activity, which is done primarily for fire
9 concerns. So we'll continue to promote that.

10 We do have some other concerns, and I think a
11 lot of those have been addressed as far as some of the
12 lower tiers, that's helped a lot of the small composting
13 projects we have in the rural counties.

14 As far as the timing issue, we're not really
15 opposed to them going out today. I think a lot of these
16 concerns can be addressed as part of the formal
17 rulemaking. If the Board members feel they need for
18 time, particularly to address the air quality concerns,
19 we understand that and would be glad to participate in
20 that too.

21 So if thirty days is needed, we'd be glad to be
22 in part of those meetings and come back next month.

23 So thank you.

24 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
25 Sweetser.

1 We have Mr. Chuck Helget.

2 THE REPORTER: Just one moment.

3 MR. HELGET: I'll wait one moment here.

4 BOARD CHAIR MOULTON-PATTERSON: In fact, I think
5 now would be a good time to take our morning break. I'm
6 really sorry but we've been going for a long time, and
7 so, Doris, we'll take ten minutes.

8 (Thereupon there was a brief recess.)

9 BOARD CHAIR MOULTON-PATTERSON: We'll start
10 with ex-parte.

11 Mr. Eaton.

12 BOARD MEMBER EATON: Yes, I just had a brief
13 conversation with Mark Aprea to ask him the difference
14 between mammalian flesh and why that's in there and not
15 reptilian as well. Is there something that's organically
16 different? That was the extent of our ex parte
17 communication.

18 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
19 Eaton.

20 Mr. Jones.

21 BOARD MEMBER JONES: Denise Delmatier and Chuck
22 White.

23 BOARD CHAIR MOULTON-PATTERSON: Thank you. And
24 I have none.

25 Mr. Medina.

1 BOARD MEMBER MEDINA: None to report.

2 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

3 BOARD MEMBER PAPARIAN: Don Gamblin of NorCal
4 regarding the current item.

5 BOARD CHAIR MOULTON-PATTERSON: Thank you. And
6 again I apologize to Mr. Helget, we'll continue.

7 MR. HELGET: Again, Chuck Helget representing
8 Allied Waste and BFI.

9 And again on the composting regs, many people
10 spent many hours in a very small room working through
11 these regs, staff has done a very good job of bringing
12 these people together. Rather than reiterate what
13 everybody else has already said, I too support the delay
14 of the regs for thirty days. I think there are a number
15 of issues that are still in need of some vetting, and
16 thirty days would help us get there, I think, much
17 quicker.

18 Thank you.

19 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
20 Helget.

21 Mike Schmaeling -- Schmaeling. I'm trying,
22 Mike.

23 MR. SCHMAELING: That's okay. It's good to see
24 you all again. Mike Schmaeling with Santa Barbara County
25 and also the enforcement agency enforcement, EAC.

1 I apologize about coming in a little huffy here,
2 I just finished a meeting upstairs. But as regards to
3 the compost regs, the LEAs have worked real hard with
4 Board staff on trying to come to a compromise, and even
5 amongst the LEAs we're still not seeing a consensus on
6 this.

7 I would like to recommend that the Board go
8 ahead and start the 45 day comment period on this.

9 Board staff has worked over two years trying to
10 get these things together and, just keep these workshops,
11 they keep working and working and working, and they're
12 just not getting that consensus that everybody is trying
13 to make.

14 I think during the 45 day comment period would
15 be the time for Board staff to really come to the,
16 whatever needs to be done. Let's get moving on these. I
17 mean they've been hammering and hammering and hammering,
18 and we're just not getting the consensus we really want
19 to see.

20 So that would be the LEA's recommendation.

21 BOARD CHAIR MOULTON-PATTERSON: Thank you. And
22 we have one last speaker, Sean Edgar.

23 MR. EDGAR: I feel elevated. Madam Chair and
24 Board members, thank you. Sean Edgar on behalf of
25 California Refuse Removal Council.

1 Our southern district had asked me to express to
2 the Board today that they would certainly appreciate
3 moving forward with option number one, the staff
4 recommendation to begin the 45 day period.

5 CRRC members in that market zone and the
6 affected area within South Coast AQMD believe that it
7 would be very valuable at this time to have a known
8 quantity with which to move forward, and believe that we
9 have worked off it. And we appreciate staff's efforts as
10 an honest broker to bring, to widen the circle and bring
11 folks together.

12 We believe we've widened the circle as far as we
13 can possibly widen it, and believe that now is the time
14 establish that known quantity and begin the formal
15 process.

16 And although there are severe concerns about the
17 South Coast process, especially as it relates to chipping
18 and grinding operations, as Mr. Cotton had mentioned
19 earlier, we believe that there is much value in the Board
20 moving forward at this time. So we would appreciate your
21 indulgence and we support option one to move forward now.

22 Thank you.

23 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
24 Edgar.

25 Before we go back to staff, or we can go back to

1 staff but then I, at some point when you think it's
2 proper, Ms. Nauman, I'd like to hear from Ms. Mortensen
3 about SB 88 since we, since the issue has come up.

4 MS. NAUMAN: If you'd like staff could respond
5 to some of the comments made.

6 BOARD CHAIR MOULTON-PATTERSON: Okay. Why don't
7 you do that, and then we'll go to Ms. Mortensen.

8 MS. NAUMAN: All right. I'll ask Jeff to begin
9 that and I'll jump in as appropriate.

10 MR. WATSON: I'd like to kind of go through each
11 of the oppositions to the thirty day. And I'm confused
12 whether thirty days or the next Board meeting since it's
13 less than thirty days, but whatever you decide, a couple
14 issues came up.

15 One; yes, public rule 1133 is definitely
16 something to keep in mind. I see no reason whatsoever,
17 and I haven't heard anything substantial to postpone the
18 going forward because of the 1133. In fact, I'm in a
19 better position to discuss things with the staff people
20 at AQMD and APCD when we have that, if we have something
21 like Sean Edgar was saying, known quantity.

22 The paper manure issue in the green. The reason
23 why it's there and why it was removed from the green is
24 because paper manure is not considered green material.
25 But the reason why it was in there in the 1993, '95, '97,

1 '98 regs is because those are ways that operators get
2 their carbon to nitrogen ratio optimal, that you have to
3 have access to different types of materials.

4 Paper is an incredible carbon source, and manure
5 is an incredible source for various things including
6 nitrogen. So that's why they're in there. It's
7 consistent with a green material operation across the
8 State of California, several of your operators will tell
9 you this.

10 I had this discussion with Matt Cotton that we
11 need to have access to the lower tiered operations to
12 have those materials available to them.

13 Basically soiled paper has never been considered
14 paper for this definition. Soiled paper has always been
15 MSW. If it's not clear, the 45 day comment period is
16 built to do that, to make it more clear.

17 Disposal; the reason why the disposal definition
18 was put in is because we have incurred -- encouraged, by
19 opening some things up in these regs, the movement of
20 green material to ag land. But we want to also put a
21 limit on how much material can go on, and how it can stay
22 in a non-incorporated manner. So that's where that
23 disposal stuff comes from.

24 Again, a 45 day comment period will get CDFA and
25 some of the farmer associations to come to the table.

1 Why should they if we're still messing around with those
2 definitions? So again, we need to enter into the 45 day.

3 The C&G, the chipping and grinding and the 48
4 hours; there are very few chippers and grinders who want
5 to keep their stuff longer. They're not chipper and
6 grinders at that point, they're turning into other
7 products.

8 We have allowed for, in the current regs, 48
9 hours for most, and up to seven days for others that the
10 LEA could see as having just cause. We could extend it
11 beyond seven days, but my question would be, then are
12 they really composting beyond seven days, and shouldn't
13 they be covered by the composting regs? So the line
14 between composting and chipping and grinding gets very
15 fuzzy if we go much farther. So I would suggest that
16 also is very much a 45 day reg.

17 And then the last one, the cleanup needed on the
18 OIMP, that's what the 45 day, we need more eyes, we need
19 people to come to the table, and that's what happens in
20 the 45 day.

21 The paper people are definitely, I'm going to
22 sit down, regardless of the decision today I'll be
23 sitting down with them tomorrow with all the people from
24 back east, as well as representatives from this state,
25 and we'll go through their concerns.

1 I think if I've done my review appropriately,
2 that they will be very pleased that they are being served
3 rather than inhibited by this package.

4 The only other thing is on the mammalian flesh
5 versus reptilian. That comes from a issue that came in
6 Britain that bone meal, meal products from cattle were
7 served as a food source to sheep, and we had a Prion
8 development.

9 A Prion is a piece of genetic material, like a
10 virus, that's much smaller, it's heat resistant; and so
11 the concern was that the host for that was mammalian
12 flesh rather than reptilian. Reptilian and avian flesh
13 are very similar, avian being chickens.

14 So chickens are composted in the State of
15 California, or at least chicken parts, and we haven't
16 seen any Prion infection in that. We really don't have
17 evidence to suggest that the Prions are in the mammalian
18 flesh that we have in the State of California. But the
19 risk is so great that we're erring on the side of
20 caution.

21 That's where that came from.

22 BOARD MEMBER EATON: They all thought I was
23 kidding.

24 MR. WATSON: Well there we go. I think that
25 pretty much says it except one other thing, that we will

1 not be able to go into a formal hearing type 45 day for
2 at least sixty days with the OAL process, the financial
3 assurance or the financial effects impact issues that we
4 have to go through. So we'll have plenty of time for
5 further discussions with all the interested parties, they
6 will get more than thirty days to discuss this with us.

7 If we have significant changes, that we do not
8 think it will be appropriate to go into a 45 day, we'll
9 come back to the Board with a prudent package.

10 But otherwise I see no reason, there have been
11 no substantial either written or oral testimony that
12 would suggest that the people of the State of California
13 are served in any way, shape, or form of postponing this
14 action.

15 Thank you.

16 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
17 Wilson. Anything else, Ms. Nauman?

18 MS. NAUMAN: Not at this time.

19 BOARD CHAIR MOULTON-PATTERSON: Okay. Ms.
20 Mortensen.

21 MS. MORTENSEN: Thank you, Madam Chair. For the
22 record, I'm Carroll Mortensen from the Legislative Affairs
23 Office.

24 And I think I've got a little bit of information
25 that's pertinent to this debate, and it deals with Senate

1 Bill 88 authored by Costa which has gone through the
2 process and is currently sitting in Assembly
3 Appropriations. It looks like it's going to pass.

4 And what that bill does is extends the sunset
5 date regarding nuisance odors and our authority over
6 those until April, 2003. That's currently scheduled to
7 sunset at the, on January 1st of this coming year, 2002.

8 But one of the caveats in SB 88 is that this
9 regulation package is -- oops, if you want to know about
10 any other bills, I've got dozens too.

11 But the caveat with SB 88 is these regulations
12 must be adopted by the April, 2003 deadline. So I wanted
13 to offer that for the Board's consideration as well.

14 BOARD CHAIR MOULTON-PATTERSON: Thank you, Ms.
15 Mortensen.

16 Are there any questions of staff or comments?
17 Mr. Paparian.

18 BOARD MEMBER PAPARIAN: Yeah. Some of the
19 comments from some of the people who testified I think
20 are, you know, they raise some legitimate concerns that I
21 think we need to address as this process goes forward.
22 But we're not here today to adopt these regulations,
23 we're here to suggest, you know, putting them out for
24 further comment, and I think that that's, the 45 day
25 period on top of the, you know, time it takes to get 'em

1 out there for the 45 days, provides ample opportunity to
2 address the concerns in a proper forum.

3 If they come back to us after the 45 day period
4 in a form that we don't like, then we'll have the
5 opportunity to make changes to them or send them out for
6 additional comments as has been done before.

7 I think we can go through several additional
8 processes if we're not satisfied from here with the
9 results after the 45 day comment period.

10 So I think we ought to, we ought to move forward
11 with that process, you know, with the clear understanding
12 that we have that the staff is going to continue to work
13 with the interested parties and talk to them, you know,
14 very carefully about their concerns during the process.

15 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
16 Paparian.

17 With that, I see no other comments. I'd like to
18 direct staff to go out and start the formal regulation
19 adoption process.

20 And then we'll move on to item 24.

21 BOARD MEMBER JONES: Madam Chair.

22 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

23 BOARD MEMBER JONES: Actually you made your
24 motion just as I was reaching for the button.

25 BOARD CHAIR MOULTON-PATTERSON: I didn't make a

1 motion, did you have a comment?

2 BOARD MEMBER JONES: I do have a comment.

3 BOARD CHAIR MOULTON-PATTERSON: Okay.

4 BOARD MEMBER JONES: The issue with the South
5 Coast Air District is compelling, and the issue with
6 12,500 cubic yards of manure unregulated is compelling.
7 It's the same issues we dealt with in San Bernardino, and
8 I'm not comfortable with the idea that we're leaving that
9 in a notification tier.

10 And if we start the 45 day comment period, it is
11 at this staff's discretion as to what comments they take
12 and what comments they don't take. And clearly that's
13 the way the process works.

14 And while I trust our staff, I think that, that
15 there has been a lot of contention on this issue trying
16 to get some kind of resolution. My concern is 12,500
17 cubic yards of manure unregulated as we're going through
18 a reg package does not make sense to me. And I would
19 like to get some of those issues dealt with before it
20 goes out to 45 days because we may never see any
21 resolution to those comments.

22 And so I, you know, personally I'd like to see
23 the thirty days. I mean when staff says it's going to be
24 sixty before it ever goes to OAL, then why not get the
25 thirty in and send it out at the next meeting? Or why

1 not stagger this so that we say staff, you know, have two
2 more workshops; one after you've met with the paper
3 people; and then another one after you've met with the
4 South Coast? And then send it out instead of coming back
5 to us and send it out as a result of that.

6 You're going into the South Coast Air District
7 where they're going to be talking about only being able
8 to do this in vessel, and part of what we've got is
9 12,500 tons of manure that's unregulated. I don't think
10 we're connecting the dots here, because I think that that
11 creates a reason why they could put it in vessel.

12 So I'd like to make sure that we have that
13 tightened up, because I think it clearly is an area that
14 we're vulnerable. Because I certainly haven't been
15 convinced that that is an appropriate tier for 12,500
16 cubic yards of manure, not with the issues that have
17 coming in front of this Board in the last three years.

18 MS. NAUMAN: Madam Chair, just on a response to
19 a technical matter Mr. Jones raised.

20 BOARD CHAIR MOULTON-PATTERSON: Yes.

21 MS. NAUMAN: With respect to staff's obligation
22 to respond to comments. In the formal period we are
23 required to take and provide written comment on all
24 comments that we receive, so actually putting us into the
25 formal process ensures that all comments are recorded and

1 responded to.

2 BOARD CHAIR MOULTON-PATTERSON: You know, I
3 totally support staff's recommendation on this, and
4 unless I hear a motion to not go out for formal
5 rulemaking at this time I direct staff to go out to start
6 the process.

7 BOARD MEMBER JONES: Madam Chair.

8 BOARD CHAIR MOULTON-PATTERSON: Yes.

9 BOARD MEMBER JONES: Question. If a motion is
10 made that it goes out, I'll make a motion that this
11 package goes out for the 45 day comment period, that we
12 start the 45 day comment period. That's my motion. Is
13 there a second?

14 BOARD MEMBER PAPARIAN: For a point of
15 clarification just, or whatever, for counsel, I don't,
16 isn't this a redundant motion to what the Chair has --

17 BOARD CHAIR MOULTON-PATTERSON: Well I don't
18 hear a second first of all.

19 Ms. Tobias.

20 CHIEF LEGAL COUNSEL TOBIAS: Well I think it is.
21 I think that the, our practice on starting a formal
22 rulemaking is that the Chair basically gives the
23 direction to the staff so, and that's what I heard the
24 Chair doing, so that motion would be basically redundant
25 to what the Chair's --

1 BOARD MEMBER EATON: So we don't have a vote,
2 legal counsel?

3 CHIEF LEGAL COUNSEL TOBIAS: I beg your pardon?

4 BOARD MEMBER EATON: So we don't have to vote?
5 This is another unilateral decision, is that what you're
6 telling me?

7 CHIEF LEGAL COUNSEL TOBIAS: If the Board
8 disagrees with the Chair's direction they could make a
9 motion to not go out for review since that's what she's
10 directing, and basically make a motion to keep it in
11 house.

12 BOARD MEMBER EATON: Isn't it procedurally that
13 if any Board member objects then there has to be a motion
14 to send it out? That's how it works, that's procedurally
15 how it works, it's not the first presumption.

16 CHIEF LEGAL COUNSEL TOBIAS: Well --

17 BOARD MEMBER EATON: So if you can show me
18 otherwise, I'd like to hear it.

19 CHIEF LEGAL COUNSEL TOBIAS: Well, and in my
20 opinion it's as I stated, that the Chair on these
21 rulemaking packages has the ability to basically provide
22 the direction --

23 BOARD MEMBER EATON: Unilaterally.

24 CHIEF LEGAL COUNSEL TOBIAS: -- and if the Board
25 does not want to do that once she's provided that

1 direction, it would have to have a motion to do something
2 else.

3 BOARD MEMBER EATON: Then what do you base that
4 on?

5 CHIEF LEGAL COUNSEL TOBIAS: My opinion.

6 BOARD MEMBER EATON: And no statute, no
7 rulemaking, no Robert's Rules of Orders, nothing?

8 CHIEF LEGAL COUNSEL TOBIAS: I think it follows
9 Robert's Rules of Order.

10 BOARD MEMBER EATON: I don't think so, so I
11 would like to have it cited. So until we have that.

12 Because I have an opinion too so, you know, and
13 I have a vote. And you're telling me your opinion is
14 better than my vote, I don't think so.

15 So according to Robert's Rules of Order you have
16 a consideration and a direction for the Board that would
17 have to be a unanimous direction, would it not?

18 CHIEF LEGAL COUNSEL TOBIAS: My opinion is that
19 the Board has --

20 BOARD MEMBER EATON: I'm asking what do you base
21 it on and where do you cite it to?

22 CHIEF LEGAL COUNSEL TOBIAS: My opinion is that
23 the Board has a practice --

24 BOARD MEMBER EATON: I'm not asking your for
25 your -- what do you base it on and where are you citing

1 to?

2 CHIEF LEGAL COUNSEL TOBIAS: My opinion is that
3 the Board has a practice on formal rulemaking procedures
4 to have the Chair give the direction, that's why there's
5 not a resolution with these packages, and there never is,
6 the Chair may give the direction to the staff to do
7 that. If the Board disagrees with the Board's, with the
8 Chair's direction, the Board may make a motion to do
9 something else.

10 BOARD MEMBER EATON: Okay. And where is that
11 written? That's what I want to know.

12 CHIEF LEGAL COUNSEL TOBIAS: You know, Mr.
13 Eaton, that is my opinion, it's based on past Board
14 practice and my experience at the Board.

15 BOARD MEMBER EATON: But you varied from past
16 Board practices even yesterday, so are you going to
17 switch now?

18 BOARD CHAIR MOULTON-PATTERSON: Thank you.
19 Okay. We didn't have a second on the motion.

20 BOARD MEMBER EATON: Oh, I seconded the motion.

21 BOARD CHAIR MOULTON-PATTERSON: I'm going to
22 call an adjournment -- not an adjournment, a five minute
23 break. Thank you.

24 (Thereupon there was a brief recess.)

25 BOARD CHAIR MOULTON-PATTERSON: I want to thank

1 the audience for your patience, thank you very much.

2 Ex-parte, Mr. Eaton?

3 BOARD MEMBER EATON: None, Madam Chair.

4 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones?

5 BOARD MEMBER JONES: None.

6 BOARD CHAIR MOULTON-PATTERSON: I have none.

7 Mr. Medina.

8 BOARD MEMBER MEDINA: None to report.

9 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian?

10 BOARD MEMBER PAPARIAN: None. Mr. Jones, I rule
11 your motion out of order because it's redundant of my
12 direction.

13 If you want to make a motion to not go out for
14 the formal rulemaking at this time, then you're more than
15 willing to do it -- you're more than welcome to do it.

16 BOARD MEMBER EATON: Then Madam Chair, I will
17 object to the direction, and at that point procedurally
18 if there's an objection, because normally these are
19 handled without objection, that will be the direction to
20 go out for the 45 day comment. If there is an objection
21 then there has to be a motion to send it out
22 procedurally.

23 BOARD MEMBER JONES: That's the way we've always
24 done it.

25 BOARD MEMBER EATON: Right. And that's how, if

1 that's your direction I would object, and now anyone can
2 make a motion.

3 BOARD CHAIR MOULTON-PATTERSON: Ms. Tobias.

4 CHIEF LEGAL COUNSEL TOBIAS: I disagree. I
5 think that if the Board disagrees with your direction
6 that they can make a motion to move this to the, to a
7 next meeting; they can make a motion to have the
8 workshops to do something else that doesn't replicate
9 your direction, and it indicates that they object to your
10 direction.

11 BOARD CHAIR MOULTON-PATTERSON: Ms. Walz -- we
12 have the AG here too, do you --

13 LEGAL COUNSEL WALZ: I'm not as conversant with
14 Robert's Rules of Order as Ms. Tobias is, so I do not
15 have an independent understanding of how Robert's Rules
16 of Orders applies to this.

17 I will however apply myself to that in the
18 future. I hope to be of more assistance to you in the
19 future if this were to come up again.

20 BOARD CHAIR MOULTON-PATTERSON: Thank you, Ms.
21 Walz.

22 BOARD MEMBER JONES: Madam Chair.

23 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

24 BOARD MEMBER JONES: I'm not trying to be an
25 obstructionist here. What I'm trying to do is, every

1 Board action here takes four votes. There are three
2 people who want to see this package out, I don't know
3 where Mr. Eaton's vote is, but I know I don't want to see
4 it out, I want to see it delayed.

5 They, for you to say or for anybody to say, send
6 'em out without four votes, to me seems contrary to the
7 mandate of AB 939 and in our PRC that says Board actions
8 will be four votes.

9 So all I'm asking is that since there was no
10 vote on your motion, since I object and Mr. Eaton
11 objects --

12 BOARD CHAIR MOULTON-PATTERSON: I didn't make a
13 motion.

14 BOARD MEMBER JONES: No, you gave a direction --

15 BOARD CHAIR MOULTON-PATTERSON: Right.

16 BOARD MEMBER JONES: -- that we objected to, so
17 I'm asking for a vote. And my motion was, because
18 clearly if it's three to two now it stays three to two
19 all throughout the process, then the only motion that
20 makes any sense to me is that I'll make a motion to put
21 the reg package out for 45 day public comment. That's my
22 motion.

23 BOARD CHAIR MOULTON-PATTERSON: Do we have a
24 second?

25 BOARD MEMBER EATON: I'll second.

1 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
2 motion by Mr. Jones to put it out for the formal 45 day
3 period, and a second by Mr. Eaton.

4 Let's go ahead and vote.

5 BOARD MEMBER PAPARIAN: Point of -- I'm sorry,
6 I'm confused here. Wasn't this the motion that's
7 redundant?

8 BOARD CHAIR MOULTON-PATTERSON: Yes.

9 BOARD MEMBER JONES: There was no motion.

10 BOARD CHAIR MOULTON-PATTERSON: It was redundant
11 of the direction, and it's been our procedures in the
12 past that the Chair could give direction when they felt
13 that the majority of the Board was in concurrence with
14 that.

15 BOARD MEMBER PAPARIAN: So is this motion in
16 order or out of order? I'm --

17 CHIEF LEGAL COUNSEL TOBIAS: It's redundant of
18 the direction. The reason that the Board has always had
19 just the direction without a vote, affirmative votes on
20 this, is because basically they are just starting a
21 process.

22 The actual vote on the approval of the
23 rulemaking or the rulemaking package comes at the end of
24 the process when the Board either approves or does not
25 approve the rulemaking.

1 So at this point it's the prerogative of the
2 Chair to basically direct that the staff continue on the
3 particular path that the Chair's giving direction on.

4 BOARD MEMBER PAPARIAN: So it seems that a more
5 proper motion would be one to void the direction of the
6 Chair.

7 BOARD CHAIR MOULTON-PATTERSON: Uh-huh.

8 BOARD MEMBER PAPARIAN: So --

9 BOARD CHAIR MOULTON-PATTERSON: And I asked for
10 one.

11 BOARD MEMBER EATON: But that would have been
12 the decision had I chose to go that path. But I chose
13 rather the other, as the direction was given I objected
14 to it, then the presumption then goes back to the Chair
15 and the procedure to make the motion by which her
16 direction will be upheld. And that is valid.

17 BOARD CHAIR MOULTON-PATTERSON: Okay. We'll go
18 there but, you know, I want the record to show that I
19 support our staff and I strongly support our staff, and
20 it's very obvious that your motion, you're going to vote
21 against it, you know, so we go thirty more days. But the
22 majority of the Board here is not being able to speak.

23 BOARD MEMBER EATON: Unfortunately it takes four
24 votes on this Board to constitute a majority.

25 BOARD MEMBER PAPARIAN: Madam Chair, if we're

1 going down this path, I'd like to offer a substitute
2 motion to have a thirty day delay in the release of the
3 regulations for a 45 day comment.

4 BOARD CHAIR MOULTON-PATTERSON: Would you
5 restate that, please?

6 BOARD MEMBER PAPARIAN: A substitute motion to
7 not go forward at this time with the 45 day comment
8 period, but rather to delay that action until after a
9 future Board meeting.

10 BOARD MEMBER MEDINA: Second that.

11 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
12 substitute motion by Mr. Paparian, and a second by Mr.
13 Medina.

14 Please call the roll.

15 BOARD SECRETARY VILLA: Eaton?

16 BOARD MEMBER EATON: Aye.

17 BOARD SECRETARY VILLA: Jones?

18 BOARD MEMBER JONES: Aye.

19 BOARD SECRETARY VILLA: Medina?

20 BOARD MEMBER MEDINA: Aye.

21 BOARD SECRETARY VILLA: Paparian?

22 BOARD MEMBER PAPARIAN: No.

23 BOARD SECRETARY VILLA: Moulton-Patterson?

24 BOARD CHAIR MOULTON-PATTERSON: No.

25 BOARD MEMBER EATON: Nothing happens.

1 BOARD MEMBER PAPARIAN: Then I think we go back
2 to the direction of the Chair.

3 BOARD CHAIR MOULTON-PATTERSON: Yes.

4 BOARD MEMBER EATON: No, because then I object
5 on the same grounds. That's the problem, Mr. Paparian,
6 is that, that there aren't sufficient votes either way.
7 And I think what Mr. Jones was trying to reach,
8 and what we probably should try and reach here is a
9 situation wherein if we had some comment with regard to
10 how we can structure the situation whereby these
11 regulations can go forward on a date certain, and yet
12 allow for the concerns to be raised in a forum such as
13 the meeting with the paper people; perhaps the, I'm not
14 so sure that that can take place prior thereto, and at
15 the same time on a date certain that irrespective of
16 those types of discussions that these will go forward.

17 I don't have a problem with them going forward.
18 I do, my concern really has been when I hear Mr. Cotton
19 agree with the others, that raises some ire that there
20 are some issues here that I think they can get closer on.

21 So what I think should happen, instead of
22 sitting here going this rather than that, and trying to
23 do a vote and, which is not going to get resolved on a --

24 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
25 you, Mr. Eaton, we're going to go on.

1 BOARD MEMBER EATON: Madam Chair.

2 BOARD CHAIR MOULTON-PATTERSON: We don't have a
3 motion either way, so we'll go on.

4 BOARD MEMBER EATON: Madam Chair.

5 BOARD CHAIR MOULTON-PATTERSON: We have a lot of
6 business here today.

7 BOARD MEMBER EATON: Well I know, Madam Chair,
8 but, you know, we also have the ability on this Board to
9 be able to speak our mind.

10 BOARD CHAIR MOULTON-PATTERSON: You have.

11 BOARD MEMBER EATON: And, well in my opinion I'm
12 not finished, and if you want to cut me off, if you want
13 to try and be that way, then that's fine. You know, it's
14 a public meeting, First Amendment rights, and no one's
15 ever cut you off from your comments. And I'm trying to
16 find a middle ground and --

17 BOARD CHAIR MOULTON-PATTERSON: Well I don't
18 think you understand --

19 BOARD MEMBER EATON: And if you can't understand
20 middle ground and you can't see it, that's fine, we'll
21 just --

22 (Thereupon there was simultaneous discussion.)

23 BOARD MEMBER EATON: We'll just let it go, it
24 stays where it is. That's great. I'm happy.

25 BOARD CHAIR MOULTON-PATTERSON: Well it stays

1 where it is.

2 BOARD MEMBER EATON: Great.

3 BOARD MEMBER MEDINA: Madam Chair, just without
4 going to a formal vote, just in terms of the sentiment of
5 the members that are on the Board, speaking for myself,
6 without having to go for any vote, I support the Chair's
7 directive.

8 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
9 Medina.

10 And we'll go on to item 24, is very important to
11 us.

12 MS. NAUMAN: Thank you, Madam Chair. Item 24 is
13 discussion of previous Board action and consideration of
14 adoption of proposed emergency regulations for issuance
15 of stipulated agreements to allow operators to work
16 outside the terms and conditions of the solid --

17 BOARD CHAIR MOULTON-PATTERSON: Excuse me, I
18 just want to interrupt for one moment. I just want to
19 thank staff for your work over the last two years, all of
20 your hours, and I hope you know that this Board really
21 appreciates your work on this item and --

22 MS. NAUMAN: Thank you, Madam Chair.

23 BOARD CHAIR MOULTON-PATTERSON: And we really
24 appreciate it very much. And I'm sorry to interrupt.

25 MS. NAUMAN: That's all right. We've heard your

1 comments and we will continue to engage in discussions on
2 that item.

3 So I think I pretty much finished the title on
4 item 24, so I won't repeat myself. And as you know, this
5 has been a an effort that has been going on for a number
6 of months, and most recently has taken the shape of a
7 working group, if you will, with three Board member
8 offices working in the public setting with stakeholders
9 and staff to work through issues relative to an approach
10 that would be reflected in emergency regulations on how
11 to deal with allowing operators to work outside terms and
12 conditions.

13 Staff has appreciated the accessibility of the
14 Board member offices during this process, and we're here
15 today to present the work to date.

16 And with that, I'll turn it over to Mary Coyle,
17 Mary Madison-Coyle -- Mary Madison-Johnson. I'm sorry,
18 Mary.

19 (LAUGHTER.)

20 MS. MADISON-JOHNSON: Good morning, Madam Chair
21 and members, I am Mary Madison-Johnson of the Permitting
22 and Inspection Branch.

23 I will be providing you with a brief history and
24 a review of the proposed regulations, and discussing with
25 you some regulatory options you have for your

1 consideration today.

2 Lastly, I'll be informing you of the steps staff
3 will be taking concerning the existing fifteen facilities
4 that are currently operating under this policy.

5 As you will recall, we've been working on the
6 permit enforcement policy or PEP since your direction to
7 review the policy last August. We assembled a
8 stakeholders work group and met several times. Proposed
9 modifications were discussed at the Board's March and
10 June meetings.

11 At the June meeting, the Board directed staff to
12 direct emergency regulations -- to draft, rather,
13 emergency regulations, and come back to the Board for
14 consideration at the August meeting.

15 The proposed regulations are to take the same
16 process used for the declared emergencies in advisory 41,
17 and apply them to non-declared emergencies.

18 The LEA can determine the non-declared
19 emergencies based on the existings of an unforeseeable
20 circumstance. The initial order may not exceed ninety
21 days, but may be extended.

22 The Board directed staff to work with Board
23 offices Moulton-Patterson, Jones, and Paparian, as well
24 as in consultation with CCDEH and the EAC in noticed
25 meetings. We were also to discuss and provide

1 recommendations on how to address the existing sites
2 operating under the policy.

3 Since the Board's direction in June, staff have
4 developed proposed emergency regulations using the
5 process for declared emergencies, and held two workshops;
6 one on July 13 and one on August 7th, and received input
7 from the Board offices, CCDEH, and the EAC and other
8 stakeholders.

9 A copy of the proposed text was included in
10 BODs* last week and copies are in the back room. We have
11 identified a few editorial corrections necessary for the
12 text as it was, which was placed on BODs which are mostly
13 to correct grammar and sentence structure.

14 Also, just for clarification, the reference to
15 the document is stipulated agreement not a stipulated
16 agreement order, and there still is a use of the word
17 order in the proposed text in a couple of places that we
18 will be deleting. We will be making those changes prior
19 to submittal to the Office of Administrative Law.

20 The key elements of the proposed regulations
21 are:

22 One. An operator would submit a written request
23 to the LEA describing an unforeseen situation, and
24 provide details relating to the changes they would like
25 to make.

1 The LEA would consider the request, and if
2 appropriate may issue a stipulated agreement for a period
3 not to extend ninety days. The LEA would be allowed, if
4 appropriate, to extend the stip in ninety day increments.

5 Two. The issuance, denial, or suspension of the
6 stip may be appealed through the appeal process
7 identified in existing regulations.

8 Three. The operator would be required to submit
9 a report to the LEA within ten days from the termination
10 date of the stip.

11 Four. The LEA would be required to transmit
12 copies of stips and operator's reports to the Board, and
13 provide an oral report to the Board after an extension of
14 a stip.

15 Five. Once a stip is provided to the Board, the
16 Board's Executive Director shall review approvals and may
17 condition, limit, suspend, or terminate a stip if it is
18 determined the agreement would cause harm to public
19 health, safety, or the environment.

20 Six. The Executive Director would be required
21 to report to the Board regarding any issuance, denial, or
22 suspension of a stip or other action taken by an LEA.

23 Are there any questions or comments on the
24 proposed regulations before I move on?

25 BOARD CHAIR MOULTON-PATTERSON: Any questions?

1 Mr. Eaton.

2 BOARD MEMBER EATON: What if there is no
3 Executive Director? And I don't mean it half-heartedly
4 here. It's a concern that I have that in a situation,
5 not only that, but give me, the procedure would be that
6 the LEA informs orally, correct, that a stipulation has
7 been entered into, is that correct?

8 MS. MADISON-JOHNSON: They would not be required
9 to do that oral report until after a stip was reissued.
10 The original issuance of the stip would be provided to
11 the Executive Director who would then provide the oral
12 report to the Board.

13 BOARD MEMBER EATON: Right.

14 This is the same process that's already in the
15 existing regs for floods and emergencies.

16 BOARD MEMBER EATON: Right. I'm just trying to
17 get procedurally what would take place.

18 MS. MADISON-JOHNSON: Okay.

19 BOARD MEMBER EATON: And in the absence of that,
20 because from time to time some of these are timely, are
21 they not?

22 MS. MADISON-JOHNSON: Uh-huh.

23 BOARD MEMBER EATON: And a date certain. So for
24 operators and LEAs, and just being, with hardly, with no
25 director, there could be a situation where the Executive

1 Director is not present, family emergency, vacation,
2 etcetera, and those kinds of things.

3 So what is in our rules and regulations in
4 regard to that? Because that would be something that one
5 of the Board members may or may not want to know if he or
6 she were following a particular facility where this was
7 entered into, or we may apparently get some conversations
8 from individuals.

9 I'm just trying to find the procedure so we have
10 a safeguard here to insulate us.

11 MR. DE BIE: That's a very good observation.
12 And I think in other types of procedures where the
13 Executive Director plays a role, language has been
14 inserted or indicates it would be the Executive Director
15 or its designee. We could look at inserting that kind of
16 language.

17 BOARD MEMBER EATON: Where we at least have some
18 ability where it's not sitting at a desk, and that would
19 be fine.

20 BOARD CHAIR MOULTON-PATTERSON: Thank you. Mr.
21 Jones, do you have anything?

22 BOARD MEMBER JONES: No, that will work.

23 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

24 BOARD MEMBER PAPARIAN: I'm sorry, I'm nodding
25 that that's fine, the direction.

1 BOARD CHAIR MOULTON-PATTERSON: Okay.

2 MS. MADISON-JOHNSON: Okay.

3 BOARD CHAIR MOULTON-PATTERSON: Thank you.

4 MS. MADISON-JOHNSON: Attached to the proposed
5 regulations are two options for your consideration.

6 The first one deals with whether or not we
7 should include a requirement in the regulations for
8 public notice.

9 And the second deals with the possible additions
10 regarding Executive Director appeals, ways of approaching
11 those appeals, but not actual language. We have provided
12 some additional language, although for the Executive
13 Director appeal it wasn't exact language.

14 Have you had a chance to look at that? And if
15 so, were there any comments or further discussion you
16 would like on those two options?

17 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

18 BOARD MEMBER PAPARIAN: Madam Chair, I'll just
19 offer that Mr. Jones and I, as well as representatives
20 from your staff were in the workshop we had on this, and
21 we did have some discussion on the issue of notice. And
22 from, from, and I've thought about it some.

23 From the options that are there, under option
24 one it would be my suggestion that we change it to a
25 combination of the notice being in a publication in a

1 daily newspaper of general circulation -- that's about
2 the fifth paragraph down under the options -- a
3 combination of that and the Web page which is the second
4 paragraph below that one.

5 BOARD MEMBER JONES: Madam Chair.

6 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

7 BOARD MEMBER JONES: I would agree with Mr.
8 Paparian's offer there. I think it's important that we
9 notice, but those two, I think, cover quite a few, quite
10 a few folks.

11 MR. DE BIE: If I may insert something? If the
12 Board is looking at the newspaper option, staff had
13 composed this language indicating that the notice would
14 be required within 24 hours, and in further discussions
15 we've determined that that may be very difficult to do.
16 If the stipulated agreement is issued on a Friday, there
17 may be issues with trying to process a notice within 24
18 hours.

19 So we would suggest changing that language that
20 they would submit a notice to the publication within 24
21 hours, realizing that it may take two or three days for
22 the notice to actually show up in the newspaper depending
23 on the newspaper's procedures. Certainly a large paper,
24 large circulation paper, you know, is able to accommodate
25 requests within 24 hours, but some others may not.

1 BOARD CHAIR MOULTON-PATTERSON: Okay.

2 BOARD MEMBER PAPARIAN: Sounds fine.

3 BOARD MEMBER JONES: That works.

4 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
5 you.

6 BOARD MEMBER JONES: Good catch.

7 MS. MADISON-JOHNSON: Were there any direction
8 that you might have for us on the Executive Director
9 approach?

10 BOARD CHAIR MOULTON-PATTERSON: Members?

11 MR. DE BIE: And just to insert a little bit
12 more discussion in that, during the workshop, at the last
13 workshop it was decided by the panel to include the
14 option to have the Executive Director be involved with,
15 with the review of the stipulated agreement. And then
16 there was testimony from stakeholders relative to whether
17 that, if the Executive Director did deny or suspend the
18 stipulated agreement, whether that should be appealable.
19 And so working with legal counsel we came up with some
20 conceptual ways of approaching an appeal.

21 It's Permitting and Inspection staff's opinion
22 that we would be setting some precedent in terms of
23 instituting an appeal of the Executive Director
24 decision. There is not one in the emergency waiver
25 procedures for floods and large declared emergencies, so

1 we would be implementing something new here.

2 And we felt that if an operator did want to
3 appeal an Executive Director decision, the regulations
4 would allow them to, to resubmit a request through the
5 LEA that would address any concerns that the Executive
6 Director may have had relative to the initial stipulated
7 agreement. And that with that resubmittal, you know,
8 they would have the ability to present their argument to
9 the Executive Director and have, basically be requesting
10 a second decision.

11 So staff feels that there isn't necessarily a
12 need for an appeal process.

13 BOARD CHAIR MOULTON-PATTERSON: Thank you.

14 BOARD MEMBER EATON: How would --

15 BOARD CHAIR MOULTON-PATTERSON: Mr. Eaton.

16 BOARD MEMBER EATON: Thank you. How would we
17 avoid the arbitrary and capricious standard? Because
18 what we would be doing, in essence, there's a stipulated
19 agreement, okay. And what I'm trying to get at here, Mr.
20 de Bie, is Board notice of these instances that, where --
21 so you had a situation where there's a stipulated
22 agreement, correct? And then there was an extension
23 granted. It's upon that, or I'm sorry, an extension
24 requested that was denied by the Executive Director?

25 MR. DE BIE: I'm sorry. It would be the initial

1 agreement is sent up to the Executive Director, they have
2 the ability to condition limits, suspend or terminate the
3 stipulated agreement at that time.

4 BOARD MEMBER EATON: Okay.

5 CHIEF LEGAL COUNSEL TOBIAS: Madam Chair, could
6 I --

7 MR. DE BIE: The Executive Director would then
8 report to the Board of any stipulated agreements of their
9 actions relative to those at the next regularly scheduled
10 meeting. So it would be, the Board would become aware of
11 what occurred at that next meeting.

12 BOARD MEMBER EATON: What I'm trying to figure
13 out is what delegation of authority and under what
14 provision we could hang our hat that that process could
15 take place, since really it would be an action by the
16 Board to the Executive Director that could be construed
17 without due process. And I just want to make sure that
18 we're on solid ground because I don't -- can you in your
19 department currently deny that?

20 BOARD CHAIR MOULTON-PATTERSON: Ms. Tobias
21 wanted to answer also, Mr. Eaton.

22 BOARD MEMBER EATON: Sure.

23 CHIEF LEGAL COUNSEL TOBIAS: I think you have a
24 good point, Mr. Eaton, and it's something that I was kind
25 of going to jump in --

1 BOARD MEMBER EATON: I just want to get there to
2 where he wants to go, I just wanted to know what steps we
3 have to take to get there. I'm not opposed to what's
4 going on, I just wanted to know how to get there, and
5 also we as Board members need to know that information as
6 issues have been raised. So I'm sorry.

7 CHIEF LEGAL COUNSEL TOBIAS: That's okay. I
8 think what would be important for the Board to
9 understand, so let me kind of flesh out what I think Mark
10 is saying, what staff is recommending here.

11 Mr. Eaton is absolutely correct when he says
12 that with the Executive Director making the decision, in
13 essence what the Board is doing or would be doing is
14 delegating their authority to the Executive Director.

15 I do have some concerns about whether an appeal
16 should be allowed in there. But I think that that's
17 something that the Board could basically, you know, deal
18 with.

19 And it is, when the Board delegates their
20 authority to the Executive Director, as they've done in
21 other situations, the rule is that they have to do it
22 with enough of the certainty that the Executive Director
23 is working within the confines of what that delegation
24 is. So it has to be fairly specific about what the Board
25 is both giving the Executive Director, and the criteria

1 upon which the Executive Director would make a decision,
2 so that the Executive Director would not be outside the
3 scope of his or her authority in using that Board
4 delegation.

5 If the Board feels that they can use that
6 delegation in this particular circumstance to the
7 Executive Director, I do think that the Board has the
8 authority to do that. But I think that's what you need
9 to weigh in this situation is would you, do you want to
10 delegate that authority to the Executive Director without
11 an appeal but with some certainty or some criteria on how
12 they would make the decision or what they would be
13 looking for?

14 Or do you want to have that appeal in there of
15 the Executive Director's decision? And then in that
16 situation it takes care of, in essence, both your kind of
17 due process question, but also the issue of delegation.

18 So I really think that what staff is basically
19 suggesting is that they think that the Executive Director
20 could make that, but that really is something that I
21 think the Board has to decide. And actually I was going
22 to bring it up right as you started bringing it up, so I
23 think it's an important issue for you to decide whether
24 you want to do that or not.

25 MS. WALZ: Another thing that I would add would

1 be that it would affect who the defendant was if the
2 disappointed applicant decided to take the issue to
3 court. Would they be taking the Executive Director,
4 because it would be the Executive Director's? Or would
5 they be taking the Board to court, because it would be
6 the Board's decision?

7 So it would depend upon whom you wanted, whose
8 final decision you wanted to represent the Board if the
9 disappointed applicant decided to, to seek judicial
10 remedy.

11 CHIEF LEGAL COUNSEL TOBIAS: And we do, as you
12 all know, we do have those delegations and, you know,
13 what the court would be looking at in that case is
14 whether you did do an appropriate delegation with this
15 criteria or whether you, in essence, kind of threw it
16 over to the Executive Director without that appropriate
17 delegation. So --

18 BOARD MEMBER EATON: You can't punt, in other
19 words, is what you're saying, because there has to be a
20 basis by which delegation gets their criteria so that
21 anyone looking at it from the outside can see whatever
22 exercise was done by he or she was within the constraints
23 of that delegation, and also the criteria set forth for
24 our delegation.

25 CHIEF LEGAL COUNSEL TOBIAS: Right. And I

1 don't, you know, if the Board decided that they could
2 delegate that authority to the Executive Director, and
3 they're on sound ground, that would not necessarily stop
4 a lawsuit if somebody was unhappy with the Executive
5 Director's decision. But you'd want to have all that
6 information in your administrative record, and then it
7 would basically be, I think, a defensible action. But it
8 would be something that somebody could always use to
9 question that particular decision.

10 I think, conversely, the other thing that you
11 have to think about here is that, you know, we're
12 creating kind of a hybrid process, if you will, that
13 still basically has the EAs making the primary decision.
14 And the question is really to what extent does the Board
15 want to have their hand in that decision, or the extent
16 to which they basically push it to the EAs and say really
17 it's your decision, and we'll do more what we do with a
18 lot of our other programs which is, you know, we'll look
19 at the EAs when it comes time for certification and see
20 whether they're doing a good job or not.

21 BOARD MEMBER JONES: Madam Chair.

22 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

23 BOARD MEMBER JONES: The, and I appreciate
24 those, that description. This follows LEA Advisory 41
25 which was part of the resolution to try to mirror this

1 policy after, over an existing, or after an existing
2 policy LEA 41.

3 And in LEA 41 it says, basically that's for
4 floods and stuff, that the Executive Director has this
5 ability to do these things. And obviously it's going,
6 it's going to take a pretty horrendous issue for him to
7 stop what's being used in an emergency and being issued
8 by a local LEA and an operator.

9 And the, you know, the way that this has been
10 crafted, and the work that Mr. Paparian and others, and
11 staff did a great job, we have good stakeholders, we had
12 the LEAs at the table, and we talked about the emergency
13 and the need to act quickly for unforeseeable issues.
14 And it's going to be the LEA makes that determination,
15 and then the Executive Director is, if he sees some or
16 she sees something that just isn't right, then they're
17 going to notify and say no, you've got to modify it.

18 I like the idea that Mr. de Bie, and I don't
19 know exactly where it fits in here, that the LEA would
20 have the opportunity to issue yet another, another stip,
21 which goes to the heart of the issue that this is a
22 stipulated agreement between an operator and an LEA that
23 is in cooperation. It's a cooperative agreement to try
24 to deal with an emergency.

25 So I think that the idea that there would be

1 appeals is pretty minimal, but I think it needs to be in
2 there, or some form. I mean something that just lets
3 people deal with those issues, and how we craft that
4 makes sense.

5 But I think the Executive Director definitely
6 has to be the one that makes that call for two reasons:

7 One, it's consistent with LEA 41, LEA Advisory
8 41.

9 And the other is we're talking about terms and
10 conditions that are going to change for a period of time.
11 And I don't think you want concurrence from the Board on
12 those kinds of actions, you want it to be at the
13 Executive Director level so that it still has the
14 opportunity to go one more step if it has to.

15 CHIEF LEGAL COUNSEL TOBIAS: Madam Chair, can I
16 just comment on that briefly? I generally agree with
17 what you said, Mr. Jones, and I do think that the Board
18 is zeroing in on this question to what extent is the
19 Board in an oversight position here or to what extent are
20 they actually having some kind of control in this
21 process? And I do think that's kind of the crux of this.

22 I would like to basically clarify that although
23 the Board's motion at the previous meeting dealing with
24 these proposed regs did ask the staff to go back to the
25 Advisory 41, we could not do that. So these regs are

1 basically operating under a different statutory section,
2 so you can use 'em as an analogy.

3 BOARD MEMBER JONES: Right. I apologize.

4 CHIEF LEGAL COUNSEL TOBIAS: That's okay.

5 BOARD MEMBER JONES: What I meant to say was
6 that was kind of the framework that you were looking for.

7 CHIEF LEGAL COUNSEL TOBIAS: Right. And I would
8 agree with that. I just didn't want to get too far down
9 that other route since we, we did have to make it clear
10 that we had to basically use a different section.

11 BOARD CHAIR MOULTON-PATTERSON: Thank you.

12 MR. DE BIE: And if I may --

13 BOARD CHAIR MOULTON-PATTERSON: Okay. Mr.
14 Paparian.

15 MR. DE BIE: If I may, just relative to the, to
16 the just recent conversation, in 17211.9 that talks about
17 the Board's role in review and the Executive Director,
18 the language we used was taken directly out of the
19 regulations for the emergency waiver procedure that
20 Advisory 41 expands on.

21 And if you look at the last sentence it does say
22 that, the Executive Director needs to determine that the
23 use of the agreement and, you know, the previous language
24 in the waiver would have been the waiver, would cause
25 harm to public health and safety and the environment.

1 They're using that criteria in determining
2 whether or not to deny or suspend or terminate or limit
3 the stipulated agreement. So there is existing criteria
4 in the waiver process, and we've included it in here.

5 CHIEF LEGAL COUNSEL TOBIAS: If I may add one
6 more comment just pertinent to that. The difference is
7 is that in that other process you have the publicly
8 noticed declared emergency that prompts that whole
9 action, and I think that that's really what you need to
10 keep in mind is that to a certain extent this process is
11 much lower in terms of the review that it's getting. So
12 in that process you have the locals already acting in a
13 publicly noticed meeting to declare an emergency, so you
14 have, your public basically knows what's happening.

15 Here, even if we add the noticing procedure, you
16 don't necessarily have that same type of situation. So
17 it's neither good nor bad, I just want to point out that
18 we did use that advisory as the framework, but there are
19 some real basic differences in how that plays out.

20 Sorry to interrupt.

21 BOARD CHAIR MOULTON-PATTERSON: Thank you, Ms.
22 Tobias.

23 Mr. Paparian.

24 BOARD MEMBER PAPARIAN: Thank you. There is a
25 complicating factor in setting up a process to appeal the

1 Executive Director's decision here, and that is that when
2 the Executive Director gets one of these stipulated
3 agreements, the Executive Director has a choice to make,
4 either to say, yeah, fine, I won't do anything; or, I've
5 got objections.

6 In order for the appeals process to be fair, if
7 somebody felt that the agreement should be objected to,
8 they should have the appeal right to appeal a decision of
9 the Executive Director not to do anything.

10 Then the question comes, suppose, you know,
11 suppose it's, you know, it's a resident close by a
12 facility, and say it's an issue involving increased
13 tonnage at the facility. During the appeals process, if
14 someone is, you know, appealing to the full Board, does
15 the facility get to have that increased tonnage that's
16 the subject of the appeal? Or do they, you know, do they
17 operate under the conditions of the permit during the
18 appeals process?

19 My point is that it starts to get pretty
20 complicated when you talk about the appeals process. I
21 think there are a couple of issues that we identified,
22 and I'll mention some of 'em in a few minutes, but there
23 are a couple of issues that we identified that we may
24 want to look at in the, when we go to the full reg
25 process as opposed to the emergency regs which these are.

1 And I think that may be one of the issues, that is the
2 appeals process may be one of the issues we want to, you
3 know, clearly deal with when we go to the full regs. But
4 maybe we can't quite deal with it at this point with the
5 emergency regs.

6 BOARD CHAIR MOULTON-PATTERSON: Thanks. Thank
7 you for bringing that up, Mr. Paparian.

8 MS. MADISON-JOHNSON: Okay, if that ends the
9 conversation on that issue. Lastly, staff will be
10 seeking additional data relating to what the problem is
11 that's holding up the existing fifteen facilities that
12 are currently operating under PEP.

13 Once the information is received and staff has
14 analyzed it, we will direct the LEAs to take whatever
15 actions they should to bring them into compliance as soon
16 as possible and report to the Board on the status of
17 those sites.

18 That completes staff's presentation.

19 BOARD CHAIR MOULTON-PATTERSON: Thank you very
20 much. Any comments before we go to the public?

21 Mr. Jones.

22 BOARD MEMBER JONES: Just one, Madam Chair.
23 Thanks, Mary, I think that, that this is a good thing. I
24 think the last part is real important for the Board
25 members to get their hands around.

1 There's fourteen facilities, in fact, we just
2 took one off I think today.

3 MS. MADISON-JOHNSON: That's right.

4 BOARD MEMBER JONES: Wasn't that Yolo site one
5 of 'em?

6 MS. MADISON-JOHNSON: ERS, yes.

7 BOARD MEMBER JONES: So we just took that off
8 today. So we have fourteen facilities for a lot of
9 reasons or different reasons have been on this for
10 years. Some of them are financial, meaning they can't
11 fully fund closure, post closure; others are CEQA type
12 issues. There's one that's been going through CEQA I
13 think for three and a half years. Most of 'em are low
14 volume, small, rural. I mean one is four tons, another
15 one is eleven yards. We're not, you know, we're talking
16 pretty minimal.

17 But when that report comes back from staff it
18 seems to me that we're going to have to have a discussion
19 about setting up a work plan with, in cooperation with
20 those jurisdictions to get them off of that list or take
21 an appropriate action.

22 Because some of 'em, depending upon the evidence
23 that's, that, that Mary and her staff are going to be
24 able to get, it may just be a reluctance on the part of a
25 local government to put in the fees that it's going to

1 take to fund those activities. So we've got to be
2 prepared to figure out how we're going to actually deal
3 with those, whether it's, whatever it is.

4 But I just wanted to point that out because I
5 think it's very important in this process.

6 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
7 Jones.

8 MS. MADISON-JOHNSON: Madam Chair, I did leave
9 out the last part of my presentation to you, sorry.

10 In conclusion, staff do recommend that the Board
11 adopt the proposed regulations and direct staff to file
12 with the Office of Administrative Law and begin the
13 development of the permanent regulations.

14 That does complete my presentation.

15 BOARD CHAIR MOULTON-PATTERSON: Thank you very
16 much for an excellent report.

17 MR. DE BIE: That completes Mary's part, I had a
18 small piece too.

19 BOARD CHAIR MOULTON-PATTERSON: Oh, okay, Mark.

20 MR. DE BIE: Just to tag onto Mary's, we would
21 propose to submit these regulations with the direction of
22 the Board.

23 So far we've heard potentially the direction to
24 insert a hybrid of the public noticing piece with the
25 newspaper and the Web, so that would be inserted unless

1 we hear objections from the Board.

2 And that we would not include any language
3 relative to the Executive Director appeal, but we did
4 hear some comment about certainly looking at that during
5 the permanent process.

6 So I think that's where we're at so far with the
7 discussion. I did want to point out, though --

8 BOARD MEMBER PAPARIAN: Excuse me, Mark, I'm
9 sorry. Did you get the Executive Director or designee
10 point that --

11 MR. DE BIE: Yes, sorry, I skipped it. I did
12 write it down, but I -- yes, we'll put that in too.

13 BOARD CHAIR MOULTON-PATTERSON: Thank you.

14 MR. DE BIE: Just for the benefit of the other
15 Board members that were not part of the group that helped
16 develop this draft, I just want to point out that
17 currently the way these emergency regs are written, it
18 does not prevent an LEA from addressing a situation at a
19 facility that may have been foreseen, and a situation
20 where the operator may be in violation of terms and
21 conditions. To address that situation through a
22 compliance order, a notice and order. It does not shut
23 that door, it still would allow the ability of the LEA to
24 do that.

25 So I just wanted to make sure that all of the

1 Board members were aware of that. I'm certain that the
2 members that were at the panel, since they were privy to
3 the discussion, are aware of that.

4 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
5 de Bie. And you know, I know we have speakers, but I do
6 want to thank you, Mr. de Bie and Ms. Madison-Johnson,
7 and of course Ms. Nauman, for bringing these regs forward
8 in a short two month timeframe. We really appreciate
9 your work on this.

10 And with that we'll go to the public. John
11 Cupps.

12 BOARD MEMBER EATON: Madam Chair, while Mr.
13 Cupps is slowly waking up.

14 BOARD CHAIR MOULTON-PATTERSON: Certainly, Mr.
15 Eaton.

16 BOARD MEMBER EATON: One of the things, so I'm
17 not sure if we had a delegation or not, but one of the
18 things that I would like to have considered is what Mr.
19 Paparian had suggested, I think when we adopted with
20 regard to AB 75, that when the Executive Director got all
21 of those plans, if you remember, each of the Board
22 offices were notified and we had a period of time to
23 review them.

24 Now this is not where we're going to have five
25 hundred of these stipulated orders, I hope, every month,

1 but surely one of them. And if you would look at that
2 process, that may solve some of the problems, at least
3 for Board notice. And I think that process has worked
4 fairly well, at least one or two of us has raised some
5 issues on some of the plans. So that may be a model that
6 we already have.

7 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
8 Eaton.

9 Mr. Leary, you heard that?

10 INTERIM EXECUTIVE DIRECTOR LEARY: Yes.

11 BOARD CHAIR MOULTON-PATTERSON: Thank you.

12 Mr. Cupps, thank you.

13 MR. CUPPS: Madam Chair, members of the Board,
14 for the record my name is John Cupps, I'm a consultant, I
15 work with several landfill operators.

16 I really just had a basic question about both
17 the intent and the potential effect of the regulations as
18 drafted. Certainly based upon conversations that I've
19 had with Mr. Paparian and Mr. Jones, my question about
20 the intent of the regulations certainly has been
21 addressed, and Mr. deBie just in his last comment made
22 it very clear, I was concerned about whether or not the
23 regulations as drafted, in fact, whether or not it was
24 the intent or the effect of the proposed regulations to
25 limit what I view as a rather broad and expressed

1 authority of the LEA under PRC Section 45011, to limit
2 that authority just to those circumstances set forth for
3 the stipulated agreement.

4 Mr. de Bie in his closing comment there I think
5 has made it very clear that that is definitely not the
6 intent of the regulations, and it probably is not the, in
7 fact, the effect of the proposed regulations as drafted.

8 However, I would submit that there is, in fact,
9 at least, just looking at the regulations without the
10 benefit of the discussions that took place at the August
11 7th workshop, there is, I think, some ambiguity on that
12 point. And so I would at least request that the Board
13 consider adding some clarifying language which was
14 incorporated in a letter that I sent to the legal office
15 and made copies available to all of the Board member's
16 offices.

17 And essentially that language would be to add at
18 the end of the section 17211 parentheses (E) the
19 following language: "Or to limit the authority of and
20 enforcement agency to issue an order pursuant to" -- well
21 I should have Section 45011 of the Public Resources Code.

22 And that essentially is my comment.

23 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian, I
24 think, wanted to address this.

25 BOARD MEMBER PAPARIAN: Yeah. I wanted to, I

1 mean there's a, an important related issue that came up
2 in the workshop that we did not address, but I want to, I
3 want to flag it as something that I think we want to have
4 some continuing discussion on as we go to the full
5 regulation package. And that's the question of what
6 happens when somebody's operating outside the terms and
7 conditions of a permit when they could foresee the
8 circumstances that violated the permit.

9 Again, we had some discussion of that in the
10 workshop, we didn't resolve it, I'm not suggesting any
11 language here related to that other than that we not lose
12 this as something that we should have further discussions
13 of as we move forward in the full regulation package.

14 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
15 Paparian.

16 Thank you, Mr. Cupps.

17 Denise Delmatier.

18 MS. DELMATIER: Madam Chair, members of the
19 Board, Denise Delmatier with NorCal Waste Systems.

20 I want to express my appreciation to staff and
21 Board members and Board members' staff for the efforts at
22 the panel workshop. That was a very lengthy endeavor, we
23 went into the evening as those who were present will
24 recall. It was reminiscent of the old committee system
25 that I thought was reflective of the outcome, and we made

1 a lot of progress there.

2 I did raise one issue at the workshop and have
3 submitted written comments subsequent to the workshop,
4 and I received a response back from legal staff as far as
5 their analysis, and a very lengthy analysis on the
6 inquiry as far as the application of Public Resources
7 Code section 44004.

8 In the response I want to be clear in my
9 inquiry, both at the workshop and here today in a written
10 comment, that the inquiry was not meant to create a
11 dichotomy, an either/or situation, as far as whether this
12 section or that section is the enabling authority under
13 45011 and 44004, but that I suggested in written comment
14 and testimony that they might, in fact, be complementary.

15 And so I guess I would like to further inquire
16 with legal staff that it is their opinion that 44004, and
17 specifically I think it was (G) (1) (A), because obviously
18 during the discussions on getting us to the point where
19 Board adopted the PEP resolution at the Board hearing, we
20 raised a couple of very real examples where minor
21 maintenance issues that were related to a couple of our
22 facilities could have been handled and addressed under
23 the former PEP policy.

24 And so we look to section (G) (1) (A) that an LEA
25 may, in fact, suspend terms and conditions, and the

1 suspension is for the maintenance or minor modifications
2 to a solid waste unit or to a solid waste management
3 equipment.

4 So my inquiry in opining that 44004 is in
5 conflict or is not enabling authority for this regulatory
6 package as far as quota stipulated agreement is
7 concerned, I certainly would like to hear at least that
8 legal staff is not suggesting that 44004, and that
9 ability for an LEA to suspend for maintenance matters and
10 minor modifications is not null and void.

11 BOARD CHAIR MOULTON-PATTERSON: Thank you.

12 Ms. Tobias.

13 CHIEF LEGAL COUNSEL TOBIAS: I think it's very
14 important to state right from the beginning on this that
15 the statute requires that permit holders be in compliance
16 with the terms and conditions of their permit. From a
17 legal point of view I think everything we're doing needs
18 to stem from that statutory provision.

19 That said, let me ask Michael to, Mr. Bledsoe to
20 addresses Denise's specific question, because I don't
21 think that that section provides the basis for this type
22 of order.

23 BOARD CHAIR MOULTON-PATTERSON: Mr. Bledsoe.

24 LEGAL COUNSEL BLEDSOE: Michael Bledsoe from the
25 Legal Office.

1 I don't see a complementary relationship, Ms.
2 Delmatier. Section 44004(G)(1) deals specifically with
3 temporary suspension of activities. So the regulations
4 that are being proposed here would in no way limit the
5 ability of an LEA to authorize the temporary suspension
6 of activities at a facility under those specified
7 criteria.

8 MS. DELMATIER: And I think we're in agreement
9 here is what I'm suggesting is that, that while the
10 specific provision for stipulated agreement in this
11 proposed emergency regulatory package, as an operator of
12 solid waste facilities, the narrow question that you've
13 opined in your analysis and your review back to me, what
14 I'm suggesting is that the question that I posed was not
15 whether a stipulated agreement is authorized under 44004,
16 but that an LEA has the authority to temporarily suspend
17 terms and conditions for minor modifications and for
18 maintenance matters under that section; and that from an
19 operator's perspective the two, hand in hand, are
20 complementary as far as the ability of an LEA to make a
21 determination outside the specific terms and conditions
22 of a permit.

23 I'm not disagreeing with you on the one hand,
24 but I just want to make certain and clear here today that
25 we're not also opining outside this emergency regulatory

1 package and response back to me that 44004 is declared
2 null and void somehow because it's not, in your opinion,
3 enabling authority for this regulatory package.

4 LEGAL COUNSEL BLEDSOE: The regulation that
5 attempted to invalidate the statute would be void, so no
6 is the answer to that specific question.

7 MS. DELMATIER: Thank you.

8 BOARD CHAIR MOULTON-PATTERSON: Thanks, Ms.
9 Delmatier.

10 Thank you, Mr. Bledsoe and Ms. Tobias.

11 Chuck White, Waste Management.

12 MR. WHITE: Thank you, Madam Chair, members of
13 the Board. Chuck White representing Waste Management.

14 I don't know if you've received, but I do have a
15 handout, a two-sided handout that lists a number of
16 issues that we would ask the Board to consider addressing
17 in this rulemaking package. I had asked that it be
18 distributed to you and to the staff.

19 BOARD CHAIR MOULTON-PATTERSON: We have received
20 that.

21 MR. WHITE: That's good. This is a fairly
22 complicated package, and you can imagine it takes a while
23 to digest. We finally were able to put together our, at
24 least initial review of the package. And again this is
25 package dated August 8th which is the last one that I

1 received until I picked up this latest one this morning.
2 So I'm not exactly certain how the one this morning
3 relates to the August 8th one, if they're the same or if
4 they're slightly different.

5 I have listed twelve different areas that we
6 would like to have the Board consider. Ideally we would
7 be, and I'm somewhat reluctant to suggest another thirty
8 day delay, but we would like to have the opportunity to
9 continue to have discussions on these twelve items on an
10 informal basis prior to adoption of these as emergency
11 regulations to provide added clarity to these.

12 I did try to provide you, in cases where I
13 could, the actual language insertion that we're
14 suggesting.

15 I can go into as much detail on these things
16 this morning describing what our concerns are as you
17 wish, or I could just give a summary of each of them, or
18 I can just, if you decide --

19 BOARD CHAIR MOULTON-PATTERSON: Why don't you
20 give a summary?

21 MR. WHITE: I'll give a summary. Of course,
22 I'll be happy to not go over it all and work with you
23 over the next thirty days before the September Board
24 meeting and try to have these incorporated.

25 But anyways, number one, the current language of

1 17211.3(B) (2) suggests that, that you're only dealing
2 with changes in operation of a facility. And we believe
3 there are really three things that may require a change
4 during application of a PEP.

5 And that is change in the operation, which is
6 already described.

7 Changes in design.

8 Or permit terms and conditions.

9 We may have a situation, particularly situations
10 involving a facility that has multiple permits that you
11 may be, have found at some late point that the language
12 of the two permits may not be exactly consistent with
13 each other; and so, therefore, we may be operating in
14 compliance with one permit, but you may not be operating
15 in compliance with another permit. And so it may not
16 involve any change in operation at all, but it may result
17 in a change in the permit terms and conditions.

18 So we believe that adding this additional
19 language that clarify, we believe would clarify that PEP
20 could be applied to not only a change in operation but a
21 change in design as well as a change in permit terms and
22 conditions would be appropriate and would potentially
23 avoid future confusion on this point.

24 Item number two deals with our concern that the
25 language in 17211.3(B) (6) seems to imply that you have to

1 be in absolute compliance with all other regulations,
2 permits, entitles of other agencies.

3 And we would certainly agree that is a goal we
4 all hope to achieve. But given the increasing complexity
5 of Air District rules and Waste Board rules, Water Board
6 rules, and so on and so forth, we're concerned that there
7 may be a situation that we would want to apply the PEP
8 policy to, say for hours of operation, but because there
9 happens to be an incidental litter problem, or some other
10 type of technical violation of minimum standards, that
11 that would preclude the application of the PEP policy
12 given the way it's worded now.

13 So we're suggesting that you might want to
14 consider language, and this is only a suggestion, we'd be
15 happy to work with the Board, but basically that, a
16 stipulated agreement that you'd find that you're in
17 substantial compliance with all other applicable
18 entitlements, regulations, and other permits, and that
19 you're making a good faith effort to resolve any areas of
20 non-compliance or differences.

21 The intent being, you certainly don't want to
22 use the PEP policy for a gross violator, but if someone
23 is basically and substantially in compliance but there's
24 a minor problem someplace else, that should not bar
25 access to a PEP policy to resolve the emergency

1 situation, and we believe this language would help
2 clarify that point.

3 My point number three is related to number two,
4 the same issue but in a different section. And again,
5 we're suggesting the language be added, "Substantial
6 compliance and demonstration of good faith efforts to
7 comply," and enable you to have access to the language of
8 the PEP regs.

9 Item four is just simply a minor editorial fix.

10 Number five is essentially similar to number one
11 where we believe that the scope of the PEP ought to be
12 broadened to beyond simply the operations of a facility
13 but also to include design and permit conditions.

14 Number six, this is related to your issue of
15 appeals and the issuance of automatic stays and whether
16 or not -- one of the options was to provide, require or
17 potentially require an EA to make a finding of imminent
18 and substantial threat. And we're concerned that we
19 certainly wouldn't want the absolute mandate that the EA
20 has to use imminent and substantial threat, because that
21 might be even be a harder bar to cross than simply the
22 concern about a potential appeal.

23 So we're not offering any language, but we're
24 just simply suggesting that it be made clear that if you
25 do go with this, some language, that it's not a mandate

1 that an EA would have to make a finding of imminent and
2 substantial threat, although they would have that option
3 if really, in fact, such a threat did exist.

4 Let's see. Item number seven. We believe that
5 this section 17211.6(B) (1) be modified to incorporate the
6 concept of not only physical changes to the facility but
7 also changes to the permit terms and conditions.

8 So, you know, you provide information regarding
9 physical changes to the facility as a result of the stip
10 you're going to agree, but it may not actually be any
11 physical changes, it may simply be that you have to take
12 steps to revise the actual permit in order to ultimately
13 return to compliance outside of the stip. So we would
14 suggest that that also be provided as a option under that
15 language.

16 Number eight relates to the public notice. We
17 don't believe there's any statutory requirement for a
18 public notice, but we would certainly concur that if a
19 public notice probably would be a good idea in these
20 situations; our preference would be the latter two
21 options for public notice that are on that laundry list.

22 I know you had a discussion, we were concerned
23 about some of the problems of the newspaper ad and
24 timing. But the last two that were on that list,
25 unfortunately they're not numbered, but the last two

1 other than do not require public notice were the two
2 options that we believe would be, still provide the
3 intent of providing adequate public notice, but would be
4 least burdensome on the facility and the enforcement
5 agency as necessary to respond to this emergency
6 situation. So we could certainly support either or both
7 of those last two.

8 Let's see, where am I?

9 BOARD MEMBER EATON: Summarizing.

10 MR. WHITE: Oh, number nine is just simply
11 some --

12 (LAUGHTER.)

13 MR. WHITE: I'm going as fast as I can. Number
14 nine is some minor editorial stuff, you know, you can
15 just take a look at that. But we believe it's necessary
16 to retain consistency with the rest of the stipulated
17 agreement language.

18 We believe there's some minor editing in number
19 ten that is required to again be correct.

20 Let's see. Number eleven deals with the
21 Executive Director, I think you are proposing to delete
22 that. We would believe that, that in order for the
23 Executive Director to not have his decision to stop a
24 stipulated agreement, to prevent it from being
25 overturned, the Executive Director would have to base his

1 decision on the need for imminent and substantial
2 endangerment to prevent and block that possibility of an
3 appeal.

4 Number twelve, in conclusion, my last item, and
5 I do appreciate your patience with me on this. Number
6 twelve is the issue dealing with existing stipulated
7 agreements that maybe exist out there, and how this new
8 regulation would affect those.

9 And we would hope that there would be some
10 clarity, either in the rule or stated in conjunction with
11 the rule, that any current agreements that are out there
12 between operators and EAs would not be overturned by
13 this, by this new rule. And we don't think they would,
14 but it would be helpful to have that clarified as you go
15 forward with the adoption of this regulation, exactly how
16 this would affect existing agreements.

17 So that is really it in sum and substance. Some
18 of these are real simple ones to correct and address,
19 some of these are little more complicated, and some of
20 even more complicated still.

21 Again, our preference would be to work with you
22 over the next couple of weeks and days, and hopefully
23 bring this back for a final package that we all can agree
24 on and really feel comfortable with going forward. But
25 we believe it's going to take a little more time to

1 address some of these concerns than perhaps can be
2 accomplished today.

3 But we do appreciate, we believe that this has
4 come a long way, it's close to being an excellent
5 package. And I would urge you to consider these other
6 final comments, and we would certainly then be in a
7 position to wholeheartedly support these regulations.

8 Thank you.

9 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
10 White.

11 I kind of wanted to get the pleasure of the
12 Board. We still have quite a few public comments. Would
13 you like to take our lunch break now?

14 BOARD MEMBER EATON: I prefer we just finish it
15 up and then they can go. Okay.

16 Mark Aprea. Please be concise though because we
17 are getting hungry.

18 MR. APREA: Madam Chair, members of the Board,
19 thank you, Mark Aprea representing Republic Services.

20 I will be uniquely brief today. And that is,
21 one, I want to echo the comments made by Mr. White.

22 But before I get into any of that I want to
23 first of all compliment Ms. Nauman and Mr. de Bie and all
24 of their staff on the excellent work that they've done.
25 If you look back when we started this last fall, it's

1 been a long process, and they deserve congratulations on
2 what I think is an excellent work product.

3 I would, however, urge, along with Mr. White,
4 that we do get this right. That we're going to have to
5 live with these emergency regs for a period of time; and
6 that we do have the opportunity, I'm not suggesting an
7 inordinate delay, but certainly would urge that we have
8 an opportunity to get it right before it goes out and
9 becomes an emergency reg under which we have to live.

10 I think also it will set a good foundation for
11 purposes of the permanent regs, it will have to be
12 developed along these, along these lines.

13 And so with that, again I want to thank the
14 staff and the Board for all of their efforts on this, and
15 particularly the Board members who took the time with the
16 working group, but urge that we come back next month for,
17 for, before they're issued.

18 Thank you, Madam Chair.

19 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
20 Aprea.

21 Mike Schmaeling. I'm getting closer, Mike.

22 MR. SCHMAELING: I appreciate that. I figure if
23 I come up here enough you'll get to know me well.

24 For the LEAs this has been a real challenge to
25 be involved in. Basically these meetings have come very

1 fast and furious, and for us to get up here to
2 Sacramento, Patty Henshaw who is working on this group is
3 coming from Orange County, and it was quite the
4 challenge.

5 These are emergency regs, as you know, and we
6 will stand in support of these. We do feel that, you
7 know, there is additional work that should be done, but
8 let's do that during the permanent, drafting of the
9 permanent regs.

10 There are a couple of issues that were brought
11 up. The Executive Director issue has worked well with
12 the Water Boards, our regional Water Board, you know. If
13 there's changes to a compliance order, you can go to the
14 Executive Director to get those changes, so we haven't
15 had too many problems with that.

16 The only thing that that does concern though is
17 what happens with the appeals if a local citizen appeals
18 this process happening? Are those conditions stayed? If
19 we're issuing an emergency enforcement action, I don't
20 like the idea of having all those conditions stayed at
21 that point. I mean why are we issuing it, it's an
22 emergency?

23 And then I just, another question deals with, I
24 take it that this is another enforcement tool. The
25 stipulated notice and order, notice the word "notice" in

1 there, is dealing with state minimum standards. I want
2 to be sure that this is not going to affect that process
3 in any way. That's been a very useful tool, and as I
4 understand, the stipulated agreement is strictly for
5 permit conditions. Am I correct in that assumption?

6 BOARD CHAIR MOULTON-PATTERSON: Mr. de Bie.

7 MR. DE BIE: If, I'll do a Michael Bledsoe and
8 say could be -- no. The stipulated agreement is defined
9 in these regulations, and it's defined relative to its
10 use, and that's for temporary emergencies and for the
11 unforeseen circumstances.

12 The term stipulated agreement should be utilized
13 in these regulations with that definition. If you choose
14 to use a similar term and use, you know, another set of
15 regulations, you know, it might be confusing.

16 But the intent here is not to limit the use of a
17 stipulated notice and order, for example. That would
18 still be available to the LEA.

19 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
20 de Bie.

21 MR. SCHMAELING: Thank you, Mark. Well, the
22 LEAs would like to see these go ahead and go through, and
23 then let's get back to the work groups at a little more
24 convenient work schedule for the permanent regulations.

25 Thank you much.

1 BOARD CHAIR MOULTON-PATTERSON: Thank you. Curt
2 Fujii, Allied Waste, followed by Sean Edgar.

3 MR. FUJII: Thank you. I'm Curt Fujii, the West
4 Region Engineer for Allied Waste.

5 I would also like to echo other sentiments
6 expressed here in thanking Board members Jones and
7 Paparian and staff for all of their excellent, hard
8 work. I think that the draft package is an excellent
9 package that very accurately and very well reflects the
10 consensus that was developed in the workshops. It's a
11 great package and I think we can all support that.

12 I would also, however, like to support the
13 suggested modifications put forth by Chuck White of Waste
14 Management. I think that they are also consistent with
15 the consensus that was developed in the workshops, but
16 they add some very, very helpful clarification to some of
17 the points without violating that consensus.

18 And in requesting that, I am speaking as someone
19 who when I leave here I go back to my office at the
20 landfill and have to work with these, so the added
21 clarification would be helpful.

22 Thank you.

23 BOARD CHAIR MOULTON-PATTERSON: Thank you. Sean
24 Edgar.

25 MR. EDGAR: Madam Chair, Board members, Sean

1 Edgar on behalf of California Refuse Removal Council.

2 Just for the record I'd like some clarification
3 that this enforceable agreement that we're discussing
4 does not indeed constitute an enforcement action. And
5 I'd like to, I'd like to, through the Chair, ask the
6 legal office to clarify that point for us.

7 BOARD CHAIR MOULTON-PATTERSON: Thank you. Ms.
8 Tobias, Mr. Bledsoe?

9 CHIEF LEGAL COUNSEL TOBIAS: This is an
10 enforceable order.

11 MR. EDGAR: Really my question was whether this
12 enforceable order constitutes an enforcement action
13 against the facility operator?

14 CHIEF LEGAL COUNSEL TOBIAS: Yes.

15 MR. EDGAR: Yes. Okay. What we would like to
16 do is we would support modifications to indicate to the
17 current emergency reg package that this stipulated
18 agreement is not, in fact, an enforcement order, and let
19 me give you a quick example.

20 Not to kill this example with scenarios, we have
21 a current looming scenario right in front of us today
22 that should this temporary package or should this
23 emergency package not flush itself out as a permanent
24 regulatory package anytime in the near future, one of the
25 near and dear issues to our heart may be a looming

1 crisis, and that would be the E-waste as an example.

2 And like I say, I don't want to pull out a
3 scenario out of this hat that might kill this effort, but
4 I want to give a brief example.

5 E-waste, we have the new fact sheet that
6 the DTSC just released, and Mr. Leary, I credit him for
7 having sent that out to some of us that may not have seen
8 that. In that new fact sheet it instructs the public and
9 operators of the facilities to do particular things.

10 Number one, it instructs the public to bring
11 their E-waste to a collection center. A collection
12 center is defined as any facility that takes greater than
13 five units from off-site sources.

14 There are a variety of handling and packaging
15 and labeling requirements that facility operators have,
16 effectively CRRC members are now conceivably operating in
17 excess of one hundred collection centers.

18 In each of those facilities we've specified, in
19 the most recent twenty million dollar facility, as an
20 example, the Blue Line facility in South San Francisco
21 that came before this Board in September, we specified as
22 part of that facility permit, and it's in the permit
23 conditions, that universal waste will be stored at a
24 particular location in the facility and that location,
25 that storage area will not be exceeded.

1 We're currently in a circumstance that the
2 newest and best of our facilities may have difficulty
3 complying with the new DTSC guidelines.

4 We're expecting permanent DTSC guidelines at
5 some stage in the future, but as I'm standing here before
6 you today, like I say, not to complicate the process,
7 however my concern would be:

8 Number one, that we have this issue before us
9 with the E-waste and storage problems that we may have.

10 Number two, the emergency package that's before
11 you today could very well be drawn out for a little while
12 longer so we may not have anything permanent to rely upon
13 in the near term.

14 And my challenge would be that, that should a
15 facility operator and the LEA not be able to reach an
16 agreement on this particular issue, that we would be in a
17 circumstance where we would have effectively an
18 enforcement action, if I'm understanding legal staff, an
19 enforcement action assumed against the facility operator;
20 and in this case, for an action of DTSC which up until
21 last week was unknown what direction we are to take.

22 So if I may just ask your indulgence I'd
23 appreciate, we would support modification specifying that
24 this stipulated enforceable agreement would not
25 constitute an enforcement action, because consequently

1 many of our facility operators, the terms and conditions
2 of their contracts with different jurisdictions,
3 enforceable enforcement actions under certain contracts
4 which my clients have would be jeopardized and placed in
5 danger as a result of this small issue.

6 So I'd appreciate and be available to answer any
7 questions, but would appreciate your indulgence in
8 consideration of this matter.

9 Thank you.

10 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
11 Edgar. That completes our public comments.

12 I'll turn it -- does staff have anything to say
13 before we go back to the Board?

14 MR. DE BIE: If the Board wishes we could go
15 through Mr. White's twelve items and indicate our opinion
16 relative to them, and then also perhaps if the Board
17 wishes we could respond to Mr. Edgar's comment.

18 BOARD CHAIR MOULTON-PATTERSON: Does the Board
19 wish to continue and finish this item up? We've heard
20 all the speakers.

21 Mr. Paparian.

22 BOARD MEMBER EATON: Madam Chair, maybe I can
23 help. Are there any of the twelve that you had no
24 problems with?

25 MR. DE BIE: There are some, the typos obviously

1 we would accept.

2 BOARD MEMBER EATON: Which ones are those. If
3 we can narrow that down then you can only have to give
4 your opinion on the ones where there's disagreement.
5 Number four.

6 BOARD MEMBER EATON: Four.

7 MR. DE BIE: Number four is something that we
8 can make a change on.

9 BOARD MEMBER EATON: Okay.

10 MR. DE BIE: And nine. Nine and --

11 BOARD MEMBER EATON: Can't have any problems
12 with twelve, that's just existing.

13 CHIEF LEGAL COUNSEL TOBIAS: Well I have a
14 problem with twelve.

15 BOARD MEMBER EATON: So you think ex post facto.

16 CHIEF LEGAL COUNSEL TOBIAS: Well if the Board
17 wants to discuss this right now I'm --

18 BOARD CHAIR MOULTON-PATTERSON: I'm just trying
19 to determine if we're going to have a long discussion we
20 need a break for our court reporter and lunch, so how
21 long would it --

22 MR. DE BIE: I could run through our comments in
23 two minutes.

24 BOARD CHAIR MOULTON-PATTERSON: Other Board
25 members?

1 BOARD MEMBER PAPARIAN: Yeah, I'm pretty close
2 to ready to go with this.

3 BOARD CHAIR MOULTON-PATTERSON: Okay. Please do
4 then, Mr. de Bie.

5 MR. DE BIE: Okay.

6 BOARD CHAIR MOULTON-PATTERSON: Are you okay
7 then, Doris, for a few minutes?

8 THE REPORTER: Sure, thanks.

9 MR. DE BIE: Should I talk faster or slower?

10 In looking at Mr. White's handout on item one
11 where he's suggesting including design of the facility,
12 permit conditions, terms and conditions, I think we could
13 look at including being more specific about its
14 operations and design aspects, but the term and condition
15 issue is addressed in (B) (3), so I don't think we would
16 accept the permit terms and conditions aspect of this
17 change to (B) (2).

18 In terms of number two, where he's indicating a
19 change to 17211.3(B) (6), staff's opinion would be that it
20 needs to be very black and white, that they're either in
21 compliance or not in compliance. And throwing in terms
22 of substantial compliance or good faith effort would just
23 lead to a lot of debate and discussion on whether they
24 were or not. And I think either you're there or you're
25 not, and we leave it up to the LEA to make that

1 determination.

2 Same thing for three and the change suggested
3 there in terms of inserting "substantial or efforts to
4 comply," they're either there or they're not.

5 Number four we indicated we could accept that
6 edit.

7 Five, again, the design part we could include;
8 but the permit and conditions part, I think it's
9 addressed again in (B) (6) in terms of dealing with terms
10 and conditions.

11 Staff viewed it a little bit differently in that
12 the stipulated agreement is being implemented or issued
13 in order to allow them to change terms and conditions, so
14 you don't really, you don't really need to tell what the,
15 indicate that it's changed terms and conditions, that's
16 what it's doing, so --

17 Oh, jumping to seven, we'll go back to six. On
18 seven, information regarding physical changes relative to
19 attaining a permit revision which is what Mr. White wants
20 to include. A long-term fix may not include a permit
21 revision, it may be some other way of addressing it. So
22 I think it would be presumptuous to put in the permit
23 revision thing.

24 Also, staff was looking at information about
25 what physically changed at the facility in order to deal

1 with this temporary emergency. That's what's being asked
2 for in the reporting requirement. What did you change?
3 Did you get more tonnage in? Did you change where
4 you're, how you're handling it? That sort of thing.

5 I think eight, eight was about the noticing.
6 And we're hearing at least some initial direction from
7 the Board to address that in a hybrid fashion with the
8 newspaper and the Web.

9 Nine is just an edit and we can accept that.

10 And ten is also an edit, so we can accept that.

11 And we've received some direction already on
12 number eleven about the Executive Director and the appeal
13 there.

14 And twelve, staff has outlined our suggestion on
15 how to address the outstanding facilities in terms of
16 gathering more information and then working with the LEAs
17 in bringing a report back to the, to the Board in how to
18 address those.

19 And then back to six. On the stay language, I
20 think we'll defer to legal on the stay.

21 And then Mr. Edgar's example, that's a tough one
22 because, you know, they're being put in a position. I
23 think it would be rare to have a facility with a
24 condition in their permit that says that, you know,
25 they're to deal with a specific waste stream in a

1 specific way. Usually the permit itself is more
2 generalized than that, so he may be in a unique
3 situation, there may be a handful that are like that.

4 Typically that kind of description is in the
5 report of facility information that could be amended with
6 the LEA in thirty days or less, and doesn't require Board
7 action and that sort of thing.

8 So I would say the more typical situation would
9 be that that kind of change could be done without a
10 permit revision. But again, his particular facility,
11 because of that condition inserted, is in a difficult
12 place.

13 BOARD CHAIR MOULTON-PATTERSON: Thank you. And
14 I wanted to go to legal.

15 Ms. Tobias.

16 CHIEF LEGAL COUNSEL TOBIAS: On number twelve,
17 what legal would suggest, and having just seen these so
18 we've had a little bit of chance to talk about it but not
19 sit down with P and E staff.

20 I guess I would suggest that, in fact, we
21 require or and suggest, whatever, that the LEAs actually
22 go back to their outstanding orders with facilities that
23 are out of compliance at this point, make clear what
24 authority they were allowed to basically do whatever
25 they're doing, whether it's a change in their facilities

1 or whatever. Make it clear whether it's under these
2 regulations now or just under 18304, and specifically
3 deal with the timeframe.

4 Since this, one of the big problems with these
5 orders all along is that they may not have timelines in
6 them or they've been on the books for a long period of
7 time, and it may be time to basically look at some other
8 option.

9 But I would point out that I don't think that
10 the previous PEP policy would stand a court challenge,
11 and so I think that there's a question as to whether they
12 would want to continue those agreements or whether they
13 would want to come in and basically reformulate them and
14 be inconsistent with these regulations.

15 With respect to number six on the question of
16 this appeal, and again, this may be something that just
17 needs to be clarified when we do the permit regs. I will
18 say this issue of this whole appeal and how AB 59 applies
19 to this is very tricky, and we've spent some time talking
20 about it, but I think you can see that there's still some
21 issues outstanding on this.

22 We think AB 59 would apply, and so there would
23 be a stay if that was, if there was an appeal in place.
24 So, you know, I think that does bring up certain
25 ramifications or considerations along that.

1 I don't, we've talked about this, I don't think
2 that we can pass a regulation that somehow exempts or in
3 some way says that a statute of AB 59 would not apply to
4 this order. So, you know, certainly we could look at
5 statutory changes and say that this is a different kind
6 of process, but without that I don't see how AB 59 would
7 not apply to this particular situation.

8 The one last thing I would offer on the
9 testimony that's been offered thus far is that with
10 respect to the situation that Mr. Edgar brought up, you
11 know, I think with a statewide problem where we have
12 something come up like that, that it could be shown that
13 operators' permits would not allow them to deal with
14 something that, new that happened such as E-waste, you
15 know, we can certainly do other emergency regulations to
16 deal with that, we could basically give them some leeway
17 at accepting that. So I think there's other things we
18 can do for that specific example.

19 And I realize that everytime we get into
20 examples everybody, you know, we've got lots of different
21 examples of how these might work, but I think for that
22 particular one there would be another way of dealing with
23 it as opposed to potentially going through this process.

24 BOARD CHAIR MOULTON-PATTERSON: Okay.

25 CHIEF LEGAL COUNSEL TOBIAS: Thank you.

1 BOARD CHAIR MOULTON-PATTERSON: Any Board
2 comments on that?

3 BOARD CHAIR MOULTON-PATTERSON: Mr. Aprea.

4 MR. APREA: Madam Chair, just one comment just
5 to substantiate what Mr. Edgar had to say, and in
6 response to what Mr. de Bie had to say.

7 These are not unique or rare occurrences that
8 the -- these, in fact, do occur quite frequently. And so
9 I would not want you to minimize, not only the frequency
10 with which they occur, but the effect that that would
11 have on a solid waste facility, particularly when, you
12 know, those terms, those terms and conditions will affect
13 an agreement that that operator has.

14 Thank you.

15 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
16 Aprea.

17 Mr. Paparian.

18 BOARD MEMBER PAPARIAN: I'm ready to make a
19 motion --

20 BOARD CHAIR MOULTON-PATTERSON: Okay.

21 BOARD MEMBER PAPARIAN: -- if folks are ready.

22 BOARD CHAIR MOULTON-PATTERSON: Okay.

23 BOARD MEMBER PAPARIAN: There were some
24 interesting points brought up that I think we can look at
25 in the program regulations, but I think that this, these

1 emergency regulations are ready to go in their current
2 form.

3 So I want to move Resolution 2001-290 with the
4 changes that we've discussed, that Mark de Bie laid out a
5 few minutes ago, both in terms of the changes he
6 mentioned before the testimony, such as the Executive
7 Director or designee, the newspaper and website
8 notification, and then the --

9 MR. DE BIE: The various edits that Mr. White
10 suggested?

11 BOARD MEMBER PAPARIAN: Yes, and then the
12 various edits that you agreed to a few minutes ago.

13 BOARD MEMBER MEDINA: Second.

14 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
15 motion by Mr. Paparian, seconded by Mr. Medina to approve
16 2001-290.

17 Any discussion before we vote? Mr. Jones, did
18 you have any discussion? Okay.

19 I just want to say even before we vote, I just
20 want to again thank staff for your hard work, thank Mr.,
21 Board Member Jones and Board Member Paparian, and of my
22 staff Ms. Sanborn for a lot of work, it's really, really
23 appreciated.

24 Please call the roll.

25 BOARD SECRETARY VILLA: Eaton?

1 BOARD MEMBER EATON: Aye.
2 BOARD SECRETARY VILLA: Jones?
3 BOARD MEMBER JONES: Aye.
4 BOARD SECRETARY VILLA: Medina?
5 BOARD MEMBER MEDINA: Aye.
6 BOARD SECRETARY VILLA: Paparian?
7 BOARD MEMBER PAPARIAN: Aye.
8 BOARD SECRETARY VILLA: Moulton-Patterson?
9 BOARD CHAIR MOULTON-PATTERSON: Aye. Okay.
10 We'll take our lunch break until about 2:15.
11 BOARD MEMBER EATON: Madam Chair, could I
12 have --
13 BOARD CHAIR MOULTON-PATTERSON: Yes, Mr. Eaton.
14 BOARD MEMBER EATON: And this really has nothing
15 to do with our staff, but in the future if we could
16 advise members of the audience when they bring up
17 documents here, I personally thought this was our staff
18 recommendation modifications to change, and I'm pretty
19 good.
20 So somehow if people from the audience can make
21 it so that it's theirs and not our staffs. Because if
22 you look very closely it could have been staff's -- but
23 that's very good.
24 (LAUGHTER.)
25 MR. WHITE: I try.

1 BOARD MEMBER EATON: But that's very good!

2 MR. WHITE: I try.

3 BOARD CHAIR MOULTON-PATTERSON: Thank you.

4 (Thereupon the luncheon recess was taken.)

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1 AFTERNOON SESSION

2 --oOo--

3 BOARD CHAIR MOULTON-PATTERSON: I'd like to call
4 the meeting back to order.

5 I believe Mr. Eaton had to leave due to a
6 personal emergency, and so we'll start with Mr. Jones.

7 Any ex-parte, Mr. Jones?

8 BOARD MEMBER JONES: No, just -- no.

9 BOARD CHAIR MOULTON-PATTERSON: Okay, I had
10 none.

11 Mr. Medina.

12 BOARD MEMBER MEDINA: None to report.

13 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian?

14 BOARD MEMBER PAPARIAN: Yes. Brief
15 conversations with Denise Delmatier, Mark Aprea, Matt
16 Cotton, and Michael Schmaeling.

17 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
18 Paparian.

19 BOARD MEMBER JONES: Madam Chair.

20 BOARD CHAIR MOULTON-PATTERSON: Yes, Mr. Jones.

21 BOARD MEMBER JONES: I saw those same people
22 and said hi, but Mike Schmaeling I did have a
23 conversation with.

24 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
25 you. Okay. We're on item 25.

1 MS. WILLD-WAGNER: Good afternoon, Madam Chair
2 and Board members.

3 BOARD CHAIR MOULTON-PATTERSON: Good afternoon.

4 MS. WILLD-WAGNER: I'm Shirley Willd-Wagner of
5 the Special Waste Division, and I will be doing the first
6 two items in the division, and Ms. Gildart will be
7 handling the middle, and I will be ending on the final
8 item for the division this afternoon.

9 Item 25 is consideration of approval of the
10 grant awards for the household hazardous waste grant
11 program for fiscal year 2001-2002. And agenda item 26 is
12 sort of a companion item so I won't interrupt in between.

13 Mr. Jim Lee will be presenting both items 25 and
14 26.

15 MR. LEE: Good afternoon, Madam Chair and
16 members of the Board. My name is Jim Lee, I'm the
17 supervisor in the used oil, household hazardous waste
18 branch.

19 Item 25 is consideration of approval of the
20 grant award for the household hazardous waste grant
21 program for fiscal year 2001-2002.

22 Three million dollars is available for fiscal
23 year 2001-2002 in household hazardous waste grants.
24 Individual jurisdictions could request up to \$200,000,
25 and regional applicants, these are including two or more

1 cities or counties, could request up to 300,000.

2 Pursuant to Public Resources Code 47200, the
3 application focused funding priorities towards the
4 following:

5 New programs for rural areas, underserved areas,
6 and for small cities.

7 Expansion of existing programs for collection of
8 additional waste types, innovative or more cost effective
9 collection methods, or expanded public education
10 services.

11 And three, regional household hazardous waste
12 programs.

13 In addition to the aforementioned statutory
14 priorities, which I noted above, the program of criteria
15 for this grant cycle were weighted towards jurisdictions
16 that did not receive a grant during the last two cycles
17 and, most notably, proposed to establish a permanent
18 household hazardous waste collection facility.

19 Thirty-three applications were received
20 totalling \$5,730,248. Applications were reviewed by
21 staff using the criteria and the evaluation process
22 approved by the Board in February.

23 Twelve applications totalling \$2,395,572 that
24 received passing scores are being recommended for funding
25 as set forth in attachment two.

1 Some statistics about the recommended
2 applications which may be of interest to you include:

3 All of the projects except one are for the
4 establishment of permanent facilities which was, as I
5 noted before, a primary focus of the grant cycle.

6 67 percent of the projects are from Northern
7 California, and 33 percent are from Southern California.
8 On this particular statistic, please note that the
9 information in your attachment number two reflects some
10 incorrect, incorrectly identifies two Northern California
11 applicants as being from Southern California.

12 75 percent of the projects are for new programs
13 in rural, underserved, or small cities.

14 42 percent of the projects have not received a
15 household hazardous waste in the last two cycles.

16 67 percent of the projects establish
17 multijurisdictional household hazardous waste programs.

18 If the Board approves funding these applications
19 there will remain a balance of \$604,128.

20 Board staff will present in agenda item number
21 26 our recommendations on use of these remaining funds.

22 In conclusion, staff recommends Board approval
23 of option one and adoption of Resolution 2001-291.

24 Are there any questions?

25 BOARD CHAIR MOULTON-PATTERSON: Any questions

1 for Mr. Lee?

2 Thank you very much for your presentation.

3 BOARD MEMBER JONES: Madam Chair.

4 BOARD CHAIR MOULTON-PATTERSON: Yes, Mr. Jones.

5 BOARD MEMBER JONES: I'll move adoption of
6 Resolution 2001-291, consideration of approval of the
7 grant awards for the household hazardous waste grant
8 program for fiscal year 2001-2002.

9 BOARD MEMBER MEDINA: Second.

10 BOARD CHAIR MOULTON-PATTERSON: Motion by Mr.
11 Jones, seconded by Mr. Medina to approve Resolution
12 2001-291.

13 Please call the roll.

14 BOARD SECRETARY VILLA: Jones?

15 BOARD MEMBER JONES: Aye.

16 BOARD SECRETARY VILLA: Medina?

17 BOARD MEMBER MEDINA: Aye.

18 BOARD SECRETARY VILLA: Paparian?

19 BOARD MEMBER PAPARIAN: Aye.

20 BOARD SECRETARY VILLA: Moulton-Patterson?

21 BOARD CHAIR MOULTON-PATTERSON: Aye. Motion
22 approved.

23 Number 26, Mr. Lee.

24 MR. LEE: Madam Chair, members of the Board.

25 Item 26 is consideration of approval of funding

1 additional 2000-2001 fiscal year projects, household
2 hazardous waste applications, that receive passing scores
3 with remaining funds from the 2001-2002 household
4 hazardous waste grant program allocation.

5 The household hazardous waste grant program is
6 an annual competitive grant program offered to local
7 jurisdictions to develop programs or facilities that
8 reduce the amount of household hazardous waste disposed
9 at solid waste facilities.

10 Three million dollars was allocated for the
11 household hazardous waste program for each of the fiscal
12 years 2000-2001 and 2001-2002.

13 In October, 2000, staff researched and
14 considered combining the 2000-2001 and the 2001-2002
15 household waste grant programs into one program for
16 administrative efficiency. Subsequently, due to the
17 different fiscal year funding sources, legal staff
18 recommended that the programs be administered separately.

19 Both the 2000-2001 and the 2001-2002 programs
20 were administered in the spring of 2001. The final
21 filing dates between these two cycles was only 35 days.

22 The 2000-2001 grant program received 39
23 applications. 19 applications were recommended for
24 funding, totalling \$3,841,108.50.

25 At the Board's June, 2001 meeting, only 16

1 applicants were awarded full or partial funding due to
2 the three million funding limitation.

3 The 2001-2002 household hazardous waste grant
4 program received 33 applications. Twelve applications
5 totalling \$2,395,872 received a passing score and were
6 awarded funding pursuant to the Board's action on the
7 previous agenda item.

8 Among the reasons that the fiscal year 2000-2001
9 household hazardous waste grant program was, in effect,
10 oversubscribed, and the subsequent cycle was
11 undersubscribed, include the following:

12 The grant cycles were very close together, only
13 35 days between the application due dates as I noted
14 previously.

15 Secondly, there was a preference given in the
16 fiscal year 2001-2002 grant cycle for those applications
17 that proposed permanent facilities. Fully fifteen
18 percent of the application score was weighted on this
19 factor alone.

20 Some permanent facility applications were funded
21 in the earlier 2000-2001 grant cycle that would otherwise
22 likely have received funding in the 2001-2002 cycle.

23 Staff recommends that the remaining fiscal year
24 2001-2002 funding of \$604,128 be considered for awarding
25 the passing but unfunded applications from the 2000-2001

1 household hazardous waste grant program.

2 As described in attachment four, staff feels
3 that this option is superior to the other potential
4 options of allowing the money to revert to the Integrated
5 Waste Management Account, or making it available through
6 yet another household hazardous waste grant cycle.

7 In conclusion, staff recommends Board approval
8 of option one, and adoption of Resolution 2001-319.

9 Are there any questions?

10 BOARD CHAIR MOULTON-PATTERSON: Any questions
11 for Mr. Lee?

12 BOARD MEMBER PAPARIAN: Madam Chair.

13 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

14 BOARD MEMBER PAPARIAN: Looking on the list of
15 the four localities, three of them would receive
16 something less than what they applied for, around half,
17 maybe a little less than half of what they actually
18 applied for. Yet the proposals, one of the proposals is
19 for putting together a year-round facility and for other
20 things.

21 Does the description I have reflect what they're
22 going to be able to do with the money we give them, or is
23 it their original --

24 MR. LEE: The four that are funded, again, will
25 be used for the facilities as described. Perhaps one of

1 the examples is the Palm Desert situation, they are
2 talking about permanent facilities, only 70,000,
3 approximately \$70,000 is proposed. However, we have
4 talked with their Assistant City Manager who assures us
5 that local funding will be used to make up the
6 difference.

7 And the, we spoke also with every one of the
8 four jurisdictions that will be receiving monies, and
9 they were all, you know, quite happy with the potential
10 turn of events here, and assured us that the money would
11 be well spent towards the facilities described.

12 BOARD MEMBER PAPARIAN: Okay. So the
13 expectation is that they will have the facilities
14 described in these paragraphs or programs?

15 MR. LEE: That is correct.

16 BOARD MEMBER PAPARIAN: Okay. Thank you.

17 BOARD MEMBER JONES: Madam Chair.

18 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

19 BOARD MEMBER JONES: I'll move adoption of
20 Resolution 2001-319, consideration of approval of funding
21 additional 2000-2001 household hazardous waste grant
22 applications that received passing scores with remaining
23 funds on the 2001-2002 household hazardous waste grant
24 program allocation.

25 BOARD MEMBER MEDINA: Second.

1 BOARD CHAIR MOULTON-PATTERSON: Okay. Motion by
2 Mr. Jones, seconded by Mr. Medina to approve 2001-319.

3 Please call the roll.

4 BOARD SECRETARY VILLA: Jones?

5 BOARD MEMBER JONES: Aye.

6 BOARD SECRETARY VILLA: Medina?

7 BOARD MEMBER MEDINA: Aye.

8 BOARD SECRETARY VILLA: Paparian?

9 BOARD MEMBER PAPARIAN: Aye.

10 BOARD SECRETARY VILLA: Moulton-Patterson?

11 BOARD CHAIR MOULTON-PATTERSON: Aye. Item 28.

12 Thank you, Mr. Lee.

13 MS. GILDART: Good afternoon, chair, members.

14 Martha Gildart with the Special Waste Division.

15 Item 27 is the consideration of approval for
16 augmentation of engineering and environmental services
17 contract IWM-C9029 for fiscal year 1999-2000.

18 Staff is requesting the Board to augment the
19 funding of the engineering and environmental services
20 contract up to the full amount of \$250,000 from the
21 current funding level of \$103,826. This was the amount
22 available in the fiscal year '99-'00 budget.

23 Stacey Patenaude with the Special Waste Division
24 will be presenting this item.

25 MS. PATENAUDE: Madam Chair, members of the

1 Board, my name is Stacey Patenaude, I work in the Solid
2 Waste Division here at the Waste Board, and I'm the
3 contract manager for the engineering and environmental
4 services contract C9029.

5 This contract was originally awarded to Dr. Dana
6 Humphreys in April of 2000, and the contract will expire
7 in May of 2002. This proposed contract is for the, is to
8 promote the use of shredded tires in civil engineering
9 applications and to do research and development into new
10 uses for shredded tires in civil engineering
11 applications.

12 By fully funding this contract with the
13 additional 100,000, 146,174, and extending the term by
14 twelve months, this will allow our efforts to continue.

15 Of the options available to the Board, staff
16 would like to recommend the adoption of Resolution
17 2001-297 for the augmentation of time and funds to C9029
18 contract.

19 That concludes my presentation. Myself and Dr.
20 Humphreys can answer any questions you may have.

21 BOARD CHAIR MOULTON-PATTERSON: Thank you very
22 much.

23 Any questions?

24 BOARD MEMBER JONES: Madam Chair.

25 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

1 BOARD MEMBER JONES: I take a lot of pleasure in
2 moving this resolution. I think Dr. Humphrey has done
3 this state a great service in the work that he's done for
4 us in the last few years, and we're lucky to have you.

5 I'll move adoption of Resolution --

6 BOARD MEMBER MEDINA: Excuse me, before we move
7 this.

8 BOARD CHAIR MOULTON-PATTERSON: Mr. Medina.

9 BOARD MEMBER MEDINA: Yeah. There was one
10 change I wanted to make, and that's, that was
11 specifically the program scoring criteria, number nine --

12 MS. GILDART: I think you're one ahead of us.

13 BOARD MEMBER MEDINA: Am I? Oh, okay.

14 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

15 BOARD MEMBER JONES: Move adoption of Resolution
16 2001-297, consideration of approval of the augmentation
17 of the engineering and environmental services contract
18 IWM-C9029 for fiscal year '99-2000.

19 BOARD MEMBER MEDINA: Second that.

20 BOARD CHAIR MOULTON-PATTERSON: Okay. Motion by
21 Mr. Jones, seconded by Mr. Medina to approve Resolution
22 2001-297.

23 Please call the roll.

24 BOARD SECRETARY VILLA: Jones?

25 BOARD MEMBER JONES: Aye.

1 BOARD SECRETARY VILLA: Medina?

2 BOARD MEMBER MEDINA: Aye.

3 BOARD SECRETARY VILLA: Paparian?

4 BOARD MEMBER PAPARIAN: Aye.

5 BOARD SECRETARY VILLA: Moulton-Patterson?

6 BOARD CHAIR MOULTON-PATTERSON: Aye. And thank
7 you, Dr. Humphreys, I didn't realize you were here. We
8 appreciate all of your work.

9 Okay. Number 28.

10 MS. GILDART: Item 28 is the consideration of
11 approval of the grant awards for the local government
12 waste tire cleanup grant program for fiscal year
13 2001-2002.

14 This item was prepared by Diane Nordstrom-
15 Lampkin of the Special Waste Division. Unfortunately for
16 us, but happily for Diane, she gave birth last Wednesday
17 to an eight pound fourteen ounce boy, Eric Russell
18 Lampkin. Mother and son are both doing well.

19 However, Bob Fujii with the Special Waste
20 Division will be presenting this item.

21 BOARD CHAIR MOULTON-PATTERSON: Please give her
22 our congratulations.

23 MR. FUJII: I'm sure she wishes she was here.

24 (LAUGHTER.)

25 MR. FUJII: Madam Chair, members of the Board,

1 I'm Bob Fujii of the Special Waste Division.

2 The purpose of these grants as you already know
3 is to provide funds for local governments to clean up
4 illegal waste tire piles within their jurisdiction.

5 This is the first cycle of awards for these
6 grants for this fiscal year. Typically we do, this one
7 is continuously funded, so we do about three different
8 cycles, and this is the first of those three cycles.

9 In previous Board actions the Board approved the
10 criteria and also approved this continuous filing period
11 for these grants back in February of 2001.

12 And then, as part of the five year plan, the
13 Board approved funding for these grants in the amount of
14 a million dollars for fiscal year 2001-2002.

15 This first cycle of grants, the deadline for
16 submitting grants was May 31st, 2000, and we only
17 received, unfortunately, two applications; one from the
18 Salinas Valley Solid Waste Authority, Monterey County,
19 and the second from the City of Modesto, Stanislaus
20 County.

21 The review panel evaluated the applications and
22 determined that the applications all met the minimum
23 score required to qualify for grant funding.

24 Just briefly, the two projects that are before
25 you, the Salinas Valley Waste Authority Project is

1 proposed to clean up four illegal, excuse me, illegal
2 waste tire sites. They range in size from 500 to 2,000
3 tires in or near the city of Gonzales in Monterey
4 County. Once the tires are collected they will be
5 disposed of in a nearby landfill. The total amount
6 requested in the grant is \$9,450.

7 And in the City of Modesto, Stanislaus County
8 project, the proposal is to continue its program to
9 collect all tires illegally disposed of, and it's now a
10 program that's been successful for them, and this is, I
11 believe, the fourth time that they'll be doing this.

12 Golden By-products is their contractor or
13 subcontractor they've hired to do this and pick up and
14 provide transportation of the waste tires. And they've
15 requested a grant in the amount of \$9,450.

16 With that, of the options available, the Board
17 staff would certainly recommend approval of Resolution
18 2001-298, funding the cleanup grants for these two grant
19 applicants that I just described.

20 And that concludes my presentation. Any
21 questions?

22 BOARD CHAIR MOULTON-PATTERSON: Okay. Any
23 questions of Mr. Fujii?

24 Oh, Mr. Medina.

25 BOARD MEMBER MEDINA: Yes, no questions. I did

1 want to offer some changes, and that's particularly to
2 the program scoring criteria.

3 And I'd like to propose that we increase the
4 number of points from four to eight to make the criteria
5 consistent with the rest of the points allowable in the
6 program area.

7 I'd also like to strike the language, "One time
8 bonus points offered to encourage participation by
9 underserved areas."

10 Staff has sent out more than 1,000 NOFAs and
11 only got two responses that were easily funded with the
12 funds available. And we'll continue to work with the
13 California tribes to ensure their participation in Board
14 programs.

15 Board member Eaton brought up the important
16 point that there is no need to discourage poor
17 communities from dipping more than once at this well, and
18 therefore I see no reason to establish constraints that
19 inhibit the interests of the organizations interested in
20 applying for funding under this program.

21 CHIEF LEGAL COUNSEL TOBIAS: Madam Chair.

22 BOARD CHAIR MOULTON-PATTERSON: Ms. Tobias.

23 CHIEF LEGAL COUNSEL TOBIAS: I think that what
24 might be appropriate in this situation, since the agenda
25 item is noticed as the approval of the grants awards,

1 that if the Board would like to change grant criteria you
2 could certainly ask the Executive Director to bring back
3 an item that would propose to do that.

4 But because the item is only noticed for grant
5 awards, we don't really have the public here, they
6 haven't been on notice that your criteria might be
7 changed, so while there's no impediment to changing the
8 criteria, we would need to have an agenda item on it to
9 take that up.

10 BOARD MEMBER MEDINA: Well your point is well
11 taken, let me direct staff to do that.

12 MS. GILDART: We'll be happy to. There is,
13 though, the timing issue. Because we're doing, I think
14 it's three cycles this year, the second application cycle
15 deadline is August 31st, so we would not be able --

16 BOARD MEMBER MEDINA: Given that you have had so
17 few applicants given the amount of funds available, is it
18 possible to stretch out the next funding cycle to get
19 more applications in?

20 MS. GILDART: It would be possible. We'd have
21 to look at the whole timeline. We could bring that back
22 to the Board. We were hoping to get three cycles
23 completed in the year, pushing one back would then also
24 push the next one back, and I'd need to check with the
25 timeline to see if we can get them all three finalized by

1 June of next year, I believe we can.

2 Will it be all right if we come back with a
3 timeline for the Board to consider?

4 The second cycle, this might also be a legal
5 issue, if it was noticed as due on August 31st, is this
6 sufficient notice of time to let the applicants know they
7 have additional time to submit?

8 CHIEF LEGAL COUNSEL TOBIAS: Well, probably not.

9 BOARD MEMBER MEDINA: When would be your next
10 cycle?

11 MR. FUJII: The one after that.

12 MS. GILDART: I think that would be November.

13 MR. FUJII: Yeah, I think it's more towards the
14 first of the year, I think it's more like January. But I
15 have to check. I mean they are about, give or take, four
16 or five months apart.

17 BOARD MEMBER MEDINA: For the August 31st cycle
18 do you have any additional applications that have come
19 in?

20 MR. FUJII: You know, at this point I don't know
21 what the status of that is. They are due on the 31st,
22 and typically the applicants will wait until almost the
23 last minute to submit them.

24 BOARD MEMBER MEDINA: Again, I'm concerned that
25 out of one thousand NOFAs that went out, that we only

1 have two applicants.

2 MR. FUJII: One thing to keep in mind, and we'd
3 be happy to change the criteria, but in this first grant
4 cycle it was a fairly short turnaround time. As I recall
5 the NOFA was on the street sometime, maybe a month or so
6 before they were required to turn the thing back in. And
7 part of our issue was dealing with, you know, our budget
8 for the tire program. The budget was just recently
9 approved at the end of July, and there was some
10 uncertainty about our funding, so trying to get that
11 first cycle in we did sort of rush it through.

12 So part of it could be just that and, you know,
13 this next one we would expect that we would get a better
14 response. But certainly not anything that's going to be
15 over, you know, we won't run out of money, but we do
16 expect to get a few more.

17 BOARD MEMBER MEDINA: Well if you could just
18 follow up in regard to the scoring criteria?

19 MR. FUJII: Sure, we can do that definitely.

20 BOARD CHAIR MOULTON-PATTERSON: Ms. Tobias, did
21 you wish to speak?

22 CHIEF LEGAL COUNSEL TOBIAS: Would that be
23 following it up for the third cycle then?

24 BOARD MEMBER MEDINA: Yes.

25 BOARD MEMBER PAPARIAN: Madam Chair.

1 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

2 BOARD MEMBER PAPARIAN: I think I've raised this
3 point on a couple of the other grant programs in the
4 past, but I think at some point in the future we may want
5 to take a look at our outreach to let people know about
6 our grant, our grants that are available. And I'll work
7 with staff on how we might take a look at that.

8 But I worry that some of the localities that
9 might be especially needing some of our grants may not
10 have the word about our grant availability, or may have
11 difficulty in putting together the packages that they
12 need to put together because they're stretched so thin to
13 begin with, they may have difficulty actually putting the
14 package together for us. So I'm not quite sure what we
15 do about that, but I think it's something worth
16 exploring.

17 MR. FUJII: We'd welcome any input that you
18 would have on that definitely. One thing we also did, as
19 the Board might remember, is we did also relax some of
20 the criteria in the last criteria item we brought forward
21 to you in February by making the grant amounts a little
22 bit more; by reducing the size of the tire piles that the
23 applicants could clean up, I mean from, I forget if it
24 was, anything above five hundred previously and now we're
25 telling them that anything below five hundred is a

1 potential candidate. So we have taken some steps.

2 And we're hoping that some of these new criteria
3 will have maybe a more favorable, you know, make it a
4 little more favorable for people to apply for these
5 grants, and that sort of remains to be seen. But we'd
6 certainly like any input from you on that.

7 BOARD MEMBER MEDINA: Madam Chair, I'd like to
8 move this resolution, I think Mr. Fujii's point was well
9 taken, but I'd like to go ahead and move this resolution.

10 I'd like to move 2001-298, approval of the grant
11 awards for the local government waste tire cleanup grant
12 program for fiscal year 2001-2002.

13 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
14 Medina. I'll second that.

15 And before we vote I did want to say, I
16 certainly agree with you, Mr. Paparian, and really
17 appreciate staff's efforts to try and reach those
18 communities.

19 Please call the roll.

20 BOARD SECRETARY VILLA: Jones?

21 BOARD MEMBER JONES: Aye.

22 BOARD SECRETARY VILLA: Medina?

23 BOARD MEMBER MEDINA: Aye.

24 BOARD SECRETARY VILLA: Paparian?

25 BOARD MEMBER PAPARIAN: Aye.

1 BOARD SECRETARY VILLA: Moulton-Patterson?

2 BOARD CHAIR MOULTON-PATTERSON: Aye. Item 29.

3 MS. GILDART: Item 29 is consideration of
4 approval of the scope of work for the fiscal year
5 2001-2002 tire subsidy rebate research study.

6 This study is intended to produce a formal
7 policy analysis of end use incentives as a market
8 development tool for tire recycling in California.

9 Staff is proposing that the scope of work be
10 carried out by the California State University at
11 Sacramento's Graduate School of Public Policy.

12 We view this as a very exciting opportunity to
13 work in close conjunction with the university system, and
14 help them in setting up their policy, public policy
15 research program.

16 The scope of work which is attached on page 29-4
17 would require the contractor to conduct a cost benefit
18 analysis of subsidies when compared to other market
19 development programs; a formal review of subsidies in
20 other states and countries; and they would be required to
21 include the North American Free Trade Agreement and the
22 general agreement on tariffs and trade as possible
23 barriers or difficulties for the import of tires and
24 export of tires; and to try and identify the appropriate
25 receivers of any subsidy, and possible subsidy amounts,

1 and whether they should be phased in or not.

2 CSUS has prepared a syllabus which lays out the
3 coursework that the graduate students will be expected to
4 conduct. There are required reading materials, and they
5 are proposing two workshops to be held with industry
6 representatives on September 5th and November 7th.

7 In conclusion, I would like to request that
8 staff approve option one, to approve the proposed scope
9 of work for fiscal year 2001-2002, and adopt Resolution
10 2001-296.

11 Staff is happy to take any questions and we have
12 Professor Rob Wassmer with Sacramento State who is
13 available also to answer questions.

14 BOARD CHAIR MOULTON-PATTERSON: Thank you, Ms.
15 Gildart.

16 Any questions, Board members?

17 Mr. Jones.

18 BOARD MEMBER JONES: Thanks, Madam Chair.

19 Question for staff and I guess for the professor.

20 When this thing first circulated around to our
21 offices I made a comment that, is there going to be an
22 analysis of the impacts of subsidy going to one
23 particular piece of the industry, let's say crumb rubber
24 producers, and what the impact that has on civil
25 engineering for the other pieces of the infrastructure

1 that's been built? And I don't see it in this
2 coursework. I mean I don't see it in this definition.

3 I think, you know, without an analysis of how a
4 subsidy to one particular part of the industry, and
5 there's no discussion of what the impact is to the other
6 part, it's very confusing to me. Because for every
7 action there's a reaction, and do we distort the
8 marketplace in such a way, without taking that into
9 consideration, then we do more harm than good?

10 I guess I had asked staff if that could be
11 included, maybe it's hidden in here somewhere, but it's,
12 it was pretty critical to my way of thinking.

13 MS. GILDART: So we could include a statement in
14 the scope of work to say, "Comparison of rebates on one
15 market segment and their effect on other market
16 segments," something along that line is what you're --

17 BOARD MEMBER JONES: I guess, yeah. Did the
18 professor have this in mind when he was being talked to
19 about this? I mean I'm really worried about the
20 distortion of the marketplace.

21 MS. GILDART: I believe so, but I think he would
22 be happy to address you himself.

23 BOARD CHAIR MOULTON-PATTERSON: Thank you,
24 welcome, and please state your name for the record.

25 PROFESSOR WASSMER: Thank you, Madam Chair and

1 members of the Board. Pleasure to be here.

2 Let me just begin with a quick background on
3 that. The way this is going to be set up is we're going
4 to have ten graduate students working on their
5 culminating project for the Masters program, and the
6 intention is for all of them to work on this issue, but
7 to pick out little segments of it, and to produce an
8 individual thesis, and at the end I would take all of
9 those theses and prepare a final report in the form that
10 the Board would like it to be.

11 And your point is very well taken, and is one
12 that one or more of the graduate students could take on
13 that chunk of it and would be very pleased to do it.

14 I think Martha and I have already set up a
15 September 7th, September 3rd or 7th, early September
16 where we would, we definitely want this to be client
17 driven with the Board being our clients, and we want, you
18 know, we're pretty much open on how we want to do this.
19 We bring no biases to this.

20 I'm trying to teach the students the least
21 biased, appropriate way to conduct a benefit cost study
22 like this, and to teach it in a client mode where we're
23 trying to serve the clients.

24 And so we, you know, would welcome, you know,
25 your participation and, you know, the raising of these

1 issues. And we consider, of course, the Board to be the
2 key stakeholder in this, and would appreciate all the
3 comments and try to, as much as humanly possible,
4 incorporate them.

5 So that issue and any other issues that you'd
6 particularly like addressed in this I think we'll be able
7 to handle. As I said, there's going to be ten different
8 students working on this so, in fact, you're going to get
9 ten different type of reports that will eventually be put
10 together into one. But that and other analysis will
11 definitely, can be, can and will be included.

12 BOARD CHAIR MOULTON-PATTERSON: Thank you very
13 much.

14 BOARD MEMBER MEDINA: Other than a good grade,
15 will the students be getting any compensation for this?

16 PROFESSOR WASSMER: Ethically I don't think that
17 that's possible. You know, to be honest with you, the
18 money is going to come to our program, and we are going
19 to use it within our program for recruitment, for
20 activities within the program.

21 But, you know, we can't, this is a class that
22 the students are taking, and I will not be taking
23 compensation directly for working with the students or
24 the students will not be taking compensation, but it will
25 come into our program to further our program. So there's

1 that benefit also.

2 BOARD CHAIR MOULTON-PATTERSON: Thank you very
3 much.

4 PROFESSOR WASSMER: Sure.

5 BOARD CHAIR MOULTON-PATTERSON: Any other
6 questions?

7 BOARD MEMBER JONES: Madam Chair.

8 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

9 BOARD MEMBER JONES: I would like to move
10 adoption of Resolution 2001-296, consideration of the
11 approval of the scope of work for fiscal year 2001-2002
12 tire subsidy/rebate research study.

13 BOARD MEMBER MEDINA: Second.

14 BOARD CHAIR MOULTON-PATTERSON: Okay, thank you,
15 Mr. Jones and Mr. Medina. Resolution by, motion by Mr.
16 Jones, seconded by Mr. Medina to approve Resolution
17 2001-296.

18 Please call the roll.

19 BOARD SECRETARY VILLA: Jones?

20 BOARD MEMBER JONES: Aye.

21 BOARD SECRETARY VILLA: Medina?

22 BOARD MEMBER MEDINA: Aye.

23 BOARD SECRETARY VILLA: Paparian?

24 BOARD MEMBER PAPARIAN: Aye.

25 BOARD SECRETARY VILLA: Moulton-Patterson?

1 BOARD CHAIR MOULTON-PATTERSON: Aye. Item 30.

2 MS. GILDART: Item 30 is consideration of
3 adoption of the proposed regulations for the Playground
4 Safety and Recycling Act Grant Program, California Code
5 of Regulations Title 14, Division 7, Chapter 7.2, Article
6 1-9; or approval to notice an additional fifteen day
7 comment period and hearing for public comment. This is
8 depending upon the Board's direction. We wanted to
9 notice both possible actions.

10 This grant -- I'm sorry, wrong one.

11 These regulations are to govern a grant program
12 that was set up by AB, Assembly Bill 1055, Villaraigosa,
13 in 1999. The program was to be administered by the Board
14 to provide grant funding to schools to update existing
15 playgrounds to use recycled content of equipment and meet
16 new safety standards. Two million dollars was made
17 available by the budget act from Proposition 98 funds.

18 The bill had also authorized the Board to adopt
19 emergency regulations to implement the program. And the
20 Board adopted those regulations at its April, 2000
21 meeting.

22 Today staff is requesting the Board to formally
23 adopt the final regulations. Staff will then prepare the
24 closure of the rulemaking file and forward the file and
25 regulations to the Office of Administrative Law.

1 Jesse Adams of the Special Waste Division will
2 describe the process staff has undertaken to prepare the
3 regulations and to incorporate the public comments.

4 MR. ADAMS: Madam Chair and members, at this
5 point since we are at the end of the public comment
6 period, it ended Monday, could we ask if anyone in the
7 audience wishes to make comment to these regulations?

8 BOARD CHAIR MOULTON-PATTERSON: Certainly. Any
9 comments from the audience? I don't have any speaker
10 slips.

11 MR. ADAMS: Nobody jumping up and down and
12 waving.

13 BOARD CHAIR MOULTON-PATTERSON: No.

14 BOARD MEMBER PAPARIAN: There's got to be
15 someone asking for thirty more days for these regs, I'm
16 surprised.

17 (LAUGHTER.)

18 MR. ADAMS: What I'd like to do --

19 BOARD CHAIR MOULTON-PATTERSON: Okay, thank
20 you. Continue, please.

21 MR. ADAMS: What I'd like to do is quickly give
22 a brief summary of previous Board action, options
23 available to the Board, our staff recommendation, and
24 then I'll go to the comments that we've received. All of
25 the comments came in from parks, and no schools

1 responded.

2 At its April 24-25, 2001 meeting, Board approved
3 staff's request to formally notice these proposed
4 regulations after directing staff to revise criterion
5 concerning extreme financial hardship.

6 The revised criterion concerning extreme
7 financial hardship was approved by the Board at its May
8 14th, 2001 meeting, and was incorporated into the
9 proposed regulations.

10 As I mentioned, the proposed regulations were
11 noticed on June 29th, 2001, and the written comment
12 period ended August 13th, 2001.

13 Members may wish to, Board members may wish to
14 adopt the proposed regulations and adopt Resolution
15 2001-282;

16 Or approve additional revisions to the proposed
17 regs and provide notice for an additional fifteen day
18 public review and comment period;

19 Or direct staff to further revise proposed
20 regulations for the Playground Safety and Recycling Act
21 Grant Program.

22 Staff recommends option one, Board adoption of
23 the proposed regulations, and adopt resolution number
24 2001-282 of attachment two.

25 Now, in our request for comments we went out to

1 the, all outside persons and organizations originally
2 consulted in the development of the emergency
3 regulations, and in addition we consulted with the
4 following state departments and associations that
5 represent the following groups:

6 We contacted the Department of Education, Health
7 Services, Conservation, Parks and Recreation, the League
8 of California Cities, California State Association of
9 Counties, California Park and Recreation Society,
10 beverage container recyclers, waste haulers and special
11 districts, school districts, county superintendents of
12 schools, non-profit organizations, and private
13 companies. It might be interesting to note that all
14 comments were received by e-mail.

15 I will not take these in order. Three of them,
16 actually two of them and a question are in the item
17 packet. I will not take them in order because I'd like
18 to aggregate two of them because they're the same.

19 The first comment opposed the division of the
20 state in the north south regions for the purposes of
21 allocating funding by population, and recommended
22 deleting Section 18576.

23 The commenter's feeling was that the program
24 should be competitive statewide with the funds being
25 awarded solely on the criteria in Section 18574 which was

1 the criteria the Board adopted for us to review the regs.

2 The response was that the basis for not deleting
3 the provision was that the geographical allocation
4 adopted by the Board was intended to ensure that the
5 grants were distributed evenly throughout the state, and
6 thereby fairly serve all of California residents.

7 The second comment covers Section 18571,
8 definitions of key terms, number six, extreme financial
9 hardship. This section covers the use of project zip
10 code to determine extreme financial hardship and the
11 lower 25 percent grant match requirement. And we don't
12 very often see a comment like this.

13 The comment is, "We support the use of zip codes
14 to determine extreme financial hardship."

15 So we determined that no response was required.

16 The third comment refers to Section 18570,
17 funding authority in part -- funding authority
18 limitations on a given grant cycle may limit eligible
19 applicants to local public educational agencies.

20 The comment was, "We recommend that the award of
21 grant funds be based solely on competitive selection
22 criteria for both local public agencies and public
23 educational agencies."

24 We responded that it was deemed appropriate to
25 notice this potential limitation in the section since the

1 source of the funds may restrict the eligibility of
2 applicants, as Martha has indicated, the two million
3 dollars for the first cycle of this program came from
4 Prop. 98 funds which are only available for the exclusive
5 use of the school.

6 And then the fourth comment, I'm aggregating two
7 items here which cover the same section, 18575, selection
8 process.

9 This section states that, "The number of
10 qualified grant applicants --" this, part of this one is
11 in the item, and part I'm reading from my notes which I
12 received last week.

13 "If the number of qualified
14 grant applicant requests are greater
15 than the funds available during the
16 grant cycle, a random number
17 generated selection method may be
18 implemented."

19 The comment is, "We recommend that funding be
20 allocated based on rank order per the competitive
21 selection criteria under Section 18574."

22 Our response to this typically is as follows,
23 will be as follows or as directed by the Board.

24 Typically funding in the Playground Safety and
25 Recycling Act Grant Program would be allocated, as you

1 recommend, based on rank order per the competitive
2 selection criteria established by the Board in Section
3 18574.

4 Section 18575 states, however, that in quotes "A
5 random number generated selection number may -- "
6 emphasis added "-- be implemented." To date, the only
7 instance where utilization of the selection method has
8 been required was in the first cycle of the Playground
9 Safety and Recycling Act Grant Program that was funded
10 from Proposition 98 funds and was open only to local
11 educational agencies.

12 There were many more passing applications in
13 this cycle than could be funded from available monies.
14 In order to provide a fair distribution of available
15 funds for this cycle, the random number generated
16 selection process was implemented.

17 That's all I have. Any questions? We have none
18 from the audience, I guess.

19 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
20 Adams.

21 Any questions? Mr. Jones.

22 BOARD MEMBER JONES: I was going to ask for
23 thirty days, but I'll just go ahead and move adoption of
24 Resolution 2001-282, consideration of adoption of
25 proposed regulation for Playground Safety and Recycling

1 Act Grant Program, and that we approve -- does it have to
2 go out for another fifteen days? No, this is the
3 approval.

4 BOARD MEMBER MEDINA: I second the motion.

5 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
6 resolution by Mr. Jones, seconded by Mr. Medina to
7 approve Resolution 2001-282.

8 Please call the roll.

9 BOARD SECRETARY VILLA: Jones?

10 BOARD MEMBER JONES: Aye.

11 BOARD SECRETARY VILLA: Medina?

12 BOARD MEMBER MEDINA: Aye.

13 BOARD SECRETARY VILLA: Paparian?

14 BOARD MEMBER PAPARIAN: Aye.

15 BOARD SECRETARY VILLA: Moulton-Patterson?

16 BOARD CHAIR MOULTON-PATTERSON: Aye. Motion
17 approved.

18 Item number 31.

19 BOARD MEMBER JONES: Madam Chair.

20 BOARD CHAIR MOULTON-PATTERSON: Yes, Mr. Jones.

21 BOARD MEMBER JONES: Before we get out of tires,
22 I heard that one of our staff, legal staff performed last
23 night at Raley Field in a rendition of the Star Spangled
24 Banner that stopped the house and brought 'em down. So I
25 just thought before she leaves we oughta at least make,

1 embarrass her.

2 (APPLAUSE.)

3 BOARD CHAIR MOULTON-PATTERSON: We didn't know
4 you had such talents, Ms. Williams, that's great. Thank
5 you.

6 Okay. Onto item 31.

7 MS. WILLD-WAGNER: Item 31. Once again, I'm
8 Shirley Willd-Wagner with the Special Waste Division.

9 Item 31 is the discussion of findings from a
10 contract the Board entered into to identify the target
11 audience for the used oil program. Some information
12 background for the Board.

13 Staff will use the results in the findings from
14 this contract to prepare our used oil allocation fund
15 item that will come to the Board, we do this annually in
16 the fall, and we will be bringing out that oil fund
17 allocation item in October.

18 We hope that these findings will assist the
19 Board in determining how to allocate used oil funds to
20 appropriately target our audience. And Don Peri of our
21 staff will introduce the item and our guest speaker
22 today.

23 MR. PERI: Good afternoon, Madam Chair and Board
24 members. My name is Don Peri, and as Shirley said I'm
25 introducing item 31.

1 The Board entered into an interagency agreement
2 with the Public Research Institute of San Francisco State
3 University to gather current information about the oil
4 disposal behavior of California residents who change
5 their own automotive oil.

6 This item presents a summary of the study's
7 findings. Data from the surveys and focus groups will
8 help the Board to:

9 One, better define and understand the target
10 audiences for outreach efforts.

11 And two, to design more effective outreach tools
12 and messages to encourage behavior change.

13 The surveys will also yield more accurate
14 estimates in the used oil recycling behavior of
15 California's do-it-yourselfers, and approve methodology
16 for obtaining such estimates.

17 I'd like to introduce Professor Rufus Browning
18 of the Public Research Institute, and he will present the
19 summary of findings.

20 PROFESSOR BROWNING: Madam Chair, members of the
21 Board, I'm pleased to have the opportunity to present
22 this first broad brush description of the findings from
23 the research we've been doing on DIYers and used oil
24 disposal in California.

25 I want to acknowledge and introduce my

1 colleague, Holley Shafer, M.A., whose creativity and
2 intelligence and dedication and capacity for very late
3 night work with tables and data and graphs has been
4 absolutely essential to the completion of this project.

5 We're here today to share information with you,
6 but we are also here to hear feedback from you, because
7 this is our first cut at the data, and we will be doing
8 additional analysis and we want that analysis to be
9 guided by your comments and questions.

10 So I certainly invite that, it's an important
11 part of the reason, the role of this hearing from our
12 point of view.

13 Okay. We had several tasks. We were to
14 undertake a literature review and research design, and in
15 the process of doing the literature review we found out
16 that not enough was out there on DIYers, and the
17 estimation of used oil disposal.

18 And so we, because we had been directed to focus
19 on Hispanics because in previous work they had been
20 labeled as a group that engaged in a higher rate of
21 improper disposal, we convened a group of researchers and
22 people from the program areas and Latino organizations to
23 advise us.

24 We also held focus groups.

25 We conducted a large scale pilot survey in three

1 counties with a sample size of about 1,200.

2 We recently conducted a statewide survey with a
3 sample size of 3,800, and we are now engaged in the
4 analysis.

5 In addition, I want to acknowledge the members
6 of the Latino Research Forum from the marketing sector,
7 from the academic sector, and from the program sector.
8 And the person who did the focus groups, the farm
9 worker's focus group conducted in Spanish, and
10 independent urban truckers focus group in English by
11 Professor Michelle St. Germain, CSU Long Beach.

12 The goals of the project were to estimate the
13 prevalence of DIY oil changing; to estimate the improper
14 disposal of used oil; to find out who the DIYers and
15 improper disposers are; to find out how to reach them,
16 through media and other possible channels; to address the
17 problem of underreporting improper disposal, severe
18 underreporting of improper disposal in surveys; to try to
19 improve the reporting of improper disposal; and to
20 examine the barriers and incentives for proper disposal.

21 The underreporting problem is very, very common
22 in surveys that deal with socially desirable and
23 undesirable behavior. Of course, almost all surveys do
24 deal with desirable or undesirable behavior. Voting is
25 five to ten percent overreported, drinking is grossly

1 underreported, and of course improper disposal of used
2 oil is grossly underreported. People don't like to tell
3 you the bad things they're doing, and they like to tell
4 you they're doing good things when they aren't.

5 Of course, there's an interesting twist to some
6 of this, the group that really overreports voting most
7 are the most educated, because they feel especially
8 guilty about not having voted and, therefore, a strong
9 incentive to report that they had.

10 We dealt with underreporting in several ways.
11 We dealt with the selection bias problem by trying to
12 increase survey participation of Latinos, using bilingual
13 interviewers at all times; conducting an extensive pilot
14 survey in largely Latino areas; and trying out different
15 methods of the interviewing on them.

16 We also determined, as a result of our early
17 work, that we should sample equally from urban and rural
18 counties. Of course, most of the population in
19 California is urban, so why would we sample equally in
20 rural counties? We wanted to be able to make equally
21 valid conclusions about urban and rural counties, because
22 we know the rate of DIY and improper disposal is higher
23 in rural areas. So we build up our sample there, and
24 sampled equally from the two kinds of counties.

25 We also dealt with response bias, the bias that

1 occurs in the process of the respondent answering a
2 question and then not giving the correct answer, the
3 accurate answer.

4 We adopted a conversational mode of interviewing
5 with Latino respondents and retrained our interviewers,
6 because our Latino Research Forum and an experiment that
7 we conducted during the pilot survey showed that
8 reporting of improper disposal greatly increased among
9 Latino respondents when we interviewed in a distinctly
10 conversational mode. Not among other respondents, but
11 among Latino respondents.

12 We primed respondents to talk freely about
13 improper disposal. We showed in another experiment that
14 if we asked people about their neighbors do-it-yourself
15 disposal practices first, they tended to report higher
16 levels of improper disposal themselves.

17 So we got them used to talking about it, first
18 hang it on somebody else, then you're more willing to
19 hang it on yourself. And then we used other methods too
20 in the interview process to try to overcome response
21 bias.

22 Even so, we're sure that most people, well it's
23 hard to say most, but many people do not report improper
24 disposal given those methods, and so we probe the answers
25 that they did give us.

1 We, if they said that they took used oil to a
2 collection center, we asked them where it was. Can you
3 name it? Can you tell us the street it's on? Many
4 didn't know. Did these people take the stuff to a
5 collection center? I think not.

6 We asked other questions as well. If they said
7 they took it to a collection center, we asked well, was
8 there anytime in the past year when you were not able to
9 take it to a collection center for this reason? For that
10 reason? For another reason?

11 Again, many people who said they had taken it
12 when asked the general question qualified their answer
13 and said, well, yeah, there have been some times when
14 they haven't been able to. And so we're kind of getting
15 at them from the back door and getting them to confess,
16 yeah, life is hard, you want to do it, but it's
17 inconvenient, and so on.

18 So we have a variety of ways then of estimating
19 improper disposal which we hope are going to bring us
20 closer to the probable known levels from sales data of
21 improper disposal.

22 Other facts of survey methodology; telephone
23 survey random digit dialing in June and July.

24 We just completed interviewing, as you see,
25 about two weeks ago, sample size 3,800. Total, in that

1 total we have short interviews to determine oil changing
2 practices with 2,600, long interviews with 1,200 800
3 DIYers and 400 non-DIYers. Margins of error for these
4 three different samples was increased with the smaller
5 sample, about two percent, about three percent, about
6 three and a half percent for just the DIYers. These are
7 95 percent confidence intervals.

8 How many DIYers do we have in this state? Well
9 we estimate that 19 percent of the households have a
10 do-it-yourselfer who changes the oil in their own
11 vehicles.

12 70 percent, seven percent -- 77 percent of
13 households take their vehicles to a garage or shop.

14 Four percent take 'em to what's called shade
15 tree mechanics who are friends or acquaintances, who are
16 not part of the regulated oil changing business. And
17 this was a finding out of our Latino Research Forum, and
18 in the pilot survey. And in some communities shade tree
19 mechanics change a lot of oil.

20 How many DIYers translated into numbers of
21 households? Statewide we estimate 2.3 million households
22 have a DIYer who changes the oil. About half a million
23 use shade tree mechanics. About nine and a half take to
24 garage and shops, out of the 12.3 million households in
25 April, 2001, according to the Department of Finance.

1 Well, who are the DIYers? Let's look at a
2 couple of demographic characteristics.

3 Are the DIYers different than the non-DIYers
4 with respect to income? The light blue are the non-
5 DIYers, the dark blue are the DIYers.

6 Well, these distributions are not terribly
7 similar. I think the one message at this table is that
8 the, there are DIYers and non-DIYers at all income
9 levels.

10 However, at the highest household level,
11 household income of about a hundred thousand or more, you
12 can see that in that group non-DIYers are more than twice
13 as likely to be at that income level.

14 Conversely, DIYers are somewhat more plentiful
15 at the lower or middle income levels, 15,000 to 70,000.
16 So a little difference.

17 The educational distribution is almost
18 identical. More non-DIYers at the graduate school level,
19 but still quite a few DIYers, and very similar
20 distribution.

21 With respect to age, there's a larger
22 difference, although again both non-DIYers and DIYers are
23 found at all age levels. But DIYers are more likely to
24 be young, and non-DIYers more likely to be 65 or older,
25 some difference there.

1 With respect to language, 75 percent of the
2 DIYers in the state we estimate are English only
3 speakers. 23 percent are Spanish or bilingual Spanish
4 and English. Two percent estimated from our sample are
5 Chinese or bilingual English, however that's almost
6 certainly, I think I can say it is certainly an
7 underestimate, the project did not call for, was not
8 budgeted for, and did not carry out Chinese language
9 interviewing, so we certainly missed some Chinese
10 language only speakers. And so we just cannot adequately
11 speak to them, and there would be more of them here if we
12 had been able to interview in Chinese.

13 Now, using our various methods of questioning,
14 we've presented here five different estimates of improper
15 disposal. You can see that dark blue section which is
16 the estimated improper disposal increasing steadily from
17 the top of the graph to the bottom of the graph, these
18 are cumulative measures that is every measure below the
19 first, includes the first and so on.

20 And the first one is that, admitted grossly
21 improper disposal. Put it down the drain, put it in the
22 trash, buried it, just let it go out on the ground. Not
23 many people admitted to that, only about eight percent.
24 If you can't name a collection center and you add that in
25 there, it goes up to almost 20 percent and so on.

1 Finally, when we get up to those who say well,
2 who insist that they dispose properly but that they
3 report their neighbors were improper disposers, we get up
4 to 37.4 percent.

5 I think the actual rate of improper disposal is
6 higher than that, I'm confident of that, so very likely
7 even our highest estimate is still low. But this was a
8 way of trying to attack in an indirect way the problem of
9 the very severe underreporting that occurs.

10 If we examine improper disposal by group, by
11 ethno-racial group in this case, this is what we find.
12 The light blue are the percent estimated improper
13 disposal from the survey, the dark blue are the percent
14 of state population eighteen and older from the U.S.
15 census. I can't say that the U.S. census is an estimate,
16 just as ours is an estimate, we know that these early
17 U.S. census figures, they're not all that accurate either
18 to tell you the truth.

19 But at any rate, these distributions are not
20 very different. That is, the distribution of improper
21 disposers by ethno-racial group is not very different
22 than the distribution of the population. And this
23 suggests that the, that improper disposal is not
24 concentrated in particular groups.

25 Now, you see that some of the bars are a bit

1 different. African American, twelve percent estimated
2 from the survey improper disposal; but these are fairly
3 small numbers now when you're talking about that group,
4 and so we cannot really take any one of these groups and
5 say, oh, gee, that looks like a difference, and we should
6 conclude that it is a difference that some group is
7 either over or underrepresented with respect to improper
8 disposal. Overall the difference is not statistically
9 significant.

10 If we examine improper disposal rates as
11 reported by what we're regarding here as our base measure
12 for the rest of the presentation, that is the combination
13 of admitted gross disposal and improper disposal and
14 can't name a center that they say they took it to, we see
15 that the rate of reported improper disposal is quite
16 different in urban and less urban and rural counties.

17 Now this isn't necessarily a report of character
18 defects of people who live in rural counties, they may be
19 facing very different conditions for the collection and
20 disposal of their used oil.

21 Other disposal findings. Six percent of DIYers
22 said they've been turned away from a collection center in
23 the past year, almost 140,000 people. That's not, that's
24 not a good learning experience. We don't want people who
25 are being turned away and then thinking, geez, this is

1 just too much trouble, I can't make all these trips
2 carrying oil in my trunk and I'm not going to bother next
3 time.

4 Farm workers focus group reported often being
5 turned away, and never being offered payment for used
6 oil.

7 And a quarter of the DIYers say it is
8 inconvenient to take used oil to a collection center in
9 their area. We have a lot more findings in this as we
10 plow into the data.

11 In terms of awareness and incentive, we find
12 that half of the DIYers say they do have and do not have
13 specific information about the environmental impact of
14 used oil. Maybe they have enough information to know
15 that they shouldn't tell a surveyor about it, but they
16 say they don't have specific information.

17 80 percent say they would recycle if paid, but
18 again, the farm workers say they've never been paid.

19 How can you reach DIYers? Well, if you compare
20 DIYers to improper disposers, which is what this graph
21 does, it both shows the distribution for each group of
22 different T.V. programming that they watch, but also
23 shows the differences between the groups.

24 These are not huge differences. That is it's
25 not as if you can go to a certain media channel and say,

1 okay, I'm going to get all the DIYers here, or all the
2 improper disposers here. They all watch some of most
3 things, and most people watch news, and if there is a
4 difference in improper disposers, they're more likely to
5 watch movies, but that's not -- most people like news,
6 educational public T.V. and movies perhaps.

7 The time of day people listen to radio or watch
8 T.V. Morning radio and evening T.V. are the highest.
9 Greatest frequency of both proper and improper disposers,
10 again not much difference between them.

11 In terms of radio programming, news higher, but
12 improper disposers are more likely than proper disposers
13 to watch, to listen to hip hop and country; but these
14 aren't huge differences, and again there's no magic way
15 to reach them, the improper disposers.

16 Where can you reach DIYers in terms of
17 activities that people engage in? I'm sorry, it's the
18 same message pretty much. Improper and proper disposers
19 are not much different in the kinds of things they do,
20 although there is a little difference overall in the rate
21 of activity.

22 Improper disposers tend to report fewer
23 activities overall than proper disposers, it's not going
24 to help us reach them unfortunately.

25 37 percent of DIYers go to movie theaters at

1 least once a month. Almost half read a newspaper every
2 day, 73 percent at least weekly. 90 percent of those who
3 read a newspaper do so in English.

4 And, but the farm workers focus group we have a
5 very different picture. They said, "Don't do it in the
6 media, the media have a credibility problem with us, we
7 don't trust them, send somebody out to talk to the
8 community, you'll get a different picture."

9 If I can summarize the highlights of these
10 findings. The DIYers statewide, that should be 19
11 percent, I apologize, not 20 percent, about 19 percent,
12 this is down from previous years. We've had a boom time,
13 probably decreased during that period. It may go up
14 again if things turn sour.

15 DIYers are somewhat younger, slightly less
16 education and income overall. The differences are not
17 great, slightly DIY rates between whites and Asian
18 Pacific islanders on the one hand, and Hispanics and
19 African Americans on the other, but not very not earth
20 shaking.

21 Estimated improper disposers statewide. At
22 least 20 percent of DIYers, more likely 37 percent, I
23 think more than that. I think that's probably
24 understated I should say.

25 And again, the improper disposers are not much

1 different than the proper disposers. There's no evidence
2 from this survey to support the conclusion that Hispanics
3 disposed of used oil improperly, more than any other
4 group. I know that's been a focus, and indeed the
5 Board's allocations and programming effort targeting
6 Hispanics may have been effective in reducing improper
7 disposal.

8 Do ethno-racial groups in general dispose of
9 used oil improperly at different rates? Again, no
10 convincing evidence from the survey to support that
11 conclusion.

12 Has the problem of underreporting been solved?
13 Well we tried hard, and we got a little closer I think to
14 making more accurate estimates, but it's, there's still a
15 problem there, and I think you can count on improper
16 disposal always being underreported in surveys.

17 Finally, in the summary of findings, many
18 barriers and unimplemented incentives remain in the
19 system of used oil collection. That's, I think, a
20 problem.

21 If I could make a program recommendation out of
22 the data, and here let me qualify by saying this is only
23 out of the data and it's only just throwing some things
24 out to get some discussion, get your attention and see
25 what feedback we get from you.

1 And this doesn't take in, I'm not an expert on
2 used oil data, and I think the data should not imply, not
3 target any single ethnic or racial group for outreach or
4 education over other groups.

5 However, there may be some subgroups, Spanish
6 speakers, some of our data shows, which we weren't able
7 to get in the presentation, Spanish speakers may be
8 different than other Hispanics and other groups, and
9 maybe higher DIY and higher improper disposal rates.

10 And the focus group suggested that people have
11 different beliefs when they immigrate, if they're recent
12 immigrants, than people who have been here longer and
13 haven't been exposed to the Board's and other
14 environmental education, and so they have different
15 practices.

16 So our final analysis -- our finer analysis,
17 which we'll be getting to in the next days and weeks,
18 should help us to pinpoint that finding.

19 Second program recommendation. Oops, this is
20 not, there it comes. We saw enough evidence in the
21 surveys to -- there are defects in the real availability
22 of collection centers to people who have used oil to
23 dispose. There are defects, and this is preventing
24 significant numbers of people and probably teaching
25 people that it's not worth going. So I think that this

1 is something the Board might want to address.

2 There are no magic media channels to improper
3 disposers, as I said earlier. You just should try the
4 methods of DIYers generally.

5 And finally, the Board should consider
6 approaches to shade tree mechanics, how they might be
7 encouraged into the system of used oil collection.

8 In terms of research, I would suggest that the
9 Board consider research into the collection and disposal
10 process, maybe especially in rural areas; the way in
11 which shade tree mechanics are integrated or possibly not
12 integrated into the system; and perhaps in communities,
13 geographically clustered groups that might have really
14 distinctive practices in oil disposal.

15 Some informants said to us, in our community
16 everyone changes their own oil and almost everyone runs
17 it out onto the ground or buries it in a corner. But we
18 don't know that and you can't tell it really from a
19 survey, you'd have to have a different community-oriented
20 kind of approach.

21 A second recommendation might be that, well, to
22 research into the barriers at some collection centers,
23 perhaps in the same way that housing discrimination has
24 been studied. Study how people are actually treated when
25 they come in with a gallon or two of oil at a busy time

1 and see what happens. Testers they call it.

2 And finally, to understand the meaning of these
3 data fully would require a deeper analysis than we're
4 going to be able to conduct. We are going to be able to
5 do some things in the next several weeks, but multi
6 varied analysis often corrects preliminary simple
7 interpretations of data, and the limits of this project
8 we're working on now are quite constrained in those
9 terms.

10 I'd be happy to answer questions.

11 BOARD CHAIR MOULTON-PATTERSON: Thanks very
12 much, Mr. Browning, for the very good work for us.

13 And I'll open it up to discussions of the Board
14 members at this time.

15 Mr. Medina.

16 BOARD MEMBER MEDINA: I just wanted to attest,
17 as one of Professor Browning's former students at San
18 Francisco State College in the urban studies program, I
19 just want to attest to the thoroughness.

20 PROFESSOR BROWNING: I remember giving you an A,
21 Jose.

22 BOARD MEMBER MEDINA: So welcome.

23 BOARD CHAIR MOULTON-PATTERSON: Thank you. Mr.
24 Paparian.

25 BOARD MEMBER PAPARIAN: A couple of questions.

1 When you looked at the, I don't remember which slide it
2 was, but the sports related questions, did you look at
3 the types of sport? If we were looking, for example, at
4 advertising in various types of sporting venues, do any
5 stand out?

6 MS. SHAFER: Do we have races? Race car
7 driving, attending races? In terms of spectator sports,
8 race car driving. And actually a lot of people --

9 BOARD MEMBER PAPARIAN: Maybe you could come to
10 the microphone and state your name.

11 MS. SHAFER: We got a lot of people saying that
12 they watched race car driving. And also people are very
13 involved with their families, and a lot of them said they
14 coached youth sports or were involved in their kids
15 sports programs.

16 PROFESSOR BROWNING: So I guess the short
17 general answer is yes, we do have data on the particular
18 sports and whether it was a spectator sport or whether it
19 was an organized activity where families or individuals
20 were participating themselves.

21 BOARD MEMBER PAPARIAN: Okay. But what's kind
22 of jumped to mind was the car racing type sports as well
23 as sports you might take your kids to, soccer, Little
24 League, that kind of stuff.

25 MS. SHAFER: Yes, yes, we have specifics, we

1 haven't analyzed them yet, but --

2 PROFESSOR BROWNING: Yeah, we haven't fully
3 analyzed them yet. We've actually had clean data for
4 only a week ourselves, so this is a first cut, as I said.
5 And we'll get into that, I think that's relevant
6 information for sure to direct media and to direct
7 outreach programs.

8 BOARD MEMBER PAPARIAN: Yeah. And then
9 similarly with the other types of activities people
10 engage in, you know, reading newspapers or whatever,
11 some, some, if there was any information there that might
12 be instructive to us in terms of what venues we might use
13 for outreach.

14 PROFESSOR BROWNING: Well we did not try to ask
15 about particular newspapers or particular radio stations
16 or television stations because with the statewide survey
17 we don't have enough people in most of the media markets
18 to make that worthwhile.

19 However, we know where they are, so, you know,
20 where the population of the state is, that's pretty much
21 where the DIYers is, but a little higher percentage in
22 the rural areas. So you'd be able to approach it that
23 way.

24 BOARD MEMBER PAPARIAN: Okay. I was a little
25 bit unclear, have you done the focus groups yet or you

1 haven't done them?

2 PROFESSOR BROWNING: We did two focus groups.

3 They were done, as I say, by Professor Michelle St.

4 Germain at CSU Long Beach.

5 BOARD MEMBER PAPARIAN: And was there one more

6 to go then on the focus groups?

7 PROFESSOR BROWNING: I beg your pardon?

8 BOARD MEMBER PAPARIAN: Were there three?

9 PROFESSOR BROWNING: There were to be three,
10 that's right. The third one was to be with farm managers
11 or owners. And it proved to be very, very difficult to
12 convene the independent truckers focus group, they're so
13 independent I suppose.

14 And at that point we decided to hold off on
15 deciding how to approach the farm owners and managers in
16 consultation with the staff here at the Board, and I'd
17 be, whether to do a survey of them instead of a focus
18 group. And I believe that we decided not to do either
19 and that the money will not be spent.

20 Staff can speak to that more authoritatively
21 than I can.

22 BOARD MEMBER JONES: Just real briefly. Thank
23 you. This was a very good presentation, and I'm hoping
24 that we can look at some of these numbers about those
25 that have admitted they were breaking the law, and those

1 that didn't know what the address was to get some kind of
2 an idea.

3 But when we talk about the defects of the
4 collection site, you know, when you say that, you know,
5 like the farm working community says they never get paid
6 for it. Do we know if in those farm working communities
7 were actually certified oil recycling centers?

8 Because there's two issues, you know. You have
9 a certified oil center that will pay 16 cents a gallon,
10 then you have a lot of other oil centers that don't want
11 to hassle with this bureaucracy, so while they will
12 collect it they won't pay for it. And there's a lot of
13 those around.

14 PROFESSOR BROWNING: The non-certified centers.

15 BOARD MEMBER JONES: Right.

16 PROFESSOR BROWNING: Yeah.

17 BOARD MEMBER JONES: Did that enter in at all?

18 PROFESSOR BROWNING: That's a very interesting
19 idea, and I think worth exploring to see whether we can
20 pinpoint whether the comment of not getting paid is in
21 any way geographically related to the location of
22 certified centers or the lack of certified centers in a
23 given area.

24 I'm not sure that we'd be able to do that with
25 the number of people that we have --

1 BOARD MEMBER JONES: Sure.

2 PROFESSOR BROWNING: -- and given the locality,
3 but we can look into it. And I thank you for that
4 suggestion.

5 BOARD MEMBER JONES: Right. And I do appreciate
6 the data because I've run both certified and actually
7 de-certified some centers because of the hoops, it wasn't
8 worth it. We took in more oil as an uncertified center
9 than we did as a certified center in rural California.
10 But it was just, it was just the mechanics of having to
11 deal with, you know, who we were dealing with and it was
12 easy.

13 But it is part of the, you know, it's part of
14 the mix, and we ought to, you know, be at least thinking
15 about it a little bit. I don't think there's a whole lot
16 of impact, but it might have something to do with the
17 defects in the system.

18 PROFESSOR BROWNING: Thank you for the comment.

19 BOARD CHAIR MOULTON-PATTERSON: And again --

20 BOARD MEMBER PAPARIAN: I'm sorry, a couple more
21 quickly.

22 BOARD CHAIR MOULTON-PATTERSON: Okay.

23 BOARD MEMBER PAPARIAN: In your survey did you
24 look at all at people's willingness to use rerefined oil?

25 PROFESSOR BROWNING: Let's see. We asked in the

1 focus group, and the focus group of farm workers, now
2 these are all Spanish speaking farm workers; they were
3 very suspicious of rerefined oil, and they used the word
4 komato, oil that's been used up as komato, burned up; not
5 losato, losato is used, but this is really burned up.

6 So there, I think, my impression is from the
7 focus group that there's a belief that used oil is really
8 dead oil and you can forget about it. Now if that belief
9 is common in that particular group or in other groups of
10 the population, which I would guess it probably is, then
11 that's an important educational thing that might
12 interfere with the marketing of rerefined oil.

13 Holley, was there anything in the survey
14 about -- there was nothing in the survey about people's
15 attitudes toward rerefined oil, and it wasn't part of the
16 contract but it came up in the focus group.

17 BOARD MEMBER PAPARIAN: And I guess this may be
18 for our staff. In terms of where we go from here with
19 this, are we going to be developing some sort of PR plan
20 or outreach proposals based on the results here?

21 MS. WILLD-WAGNER: Yes, Mr. Paparian, that is
22 one of the reasons that we have waited to bring forward
23 the used oil allocation program and a plan for the year.
24 We will bring forward a funding proposal for next year
25 that will be based on some of the recommendations and the

1 findings.

2 We will have a final report, as Dr. Browning
3 said, this is the first cut of the data, and we will have
4 his final report and then bring the oil allocation item.

5 Now, the oil allocation item will not be a
6 comprehensive public outreach plan, but it will, it will
7 hopefully get your feedback on which directions you would
8 like us to then pursue.

9 And perhaps one of the options is that we
10 actually do a more in-depth comparison between this
11 survey results and the last survey results, have our
12 efforts made the differences that were noted here in the
13 data. And also if there's further research that should
14 be done in this direction, we should address it at the
15 time in October when we bring the oil allocation item.

16 BOARD MEMBER PAPARIAN: When that item comes
17 will, maybe Dr. Browning's work, I'm not sure, will we
18 get something that says, well based on these results, you
19 know, it's recommended that we pursue, you know, A, B,
20 and C, you know, newspapers, race tracks, and soccer
21 fields or whatever it might be?

22 MS. WILLD-WAGNER: Yes.

23 BOARD MEMBER PAPARIAN: Okay.

24 MS. WILLD-WAGNER: In fact, we'll probably use
25 this information and findings for the next several years

1 directing and making -- well, and hopefully it will allow
2 the Board to make those decisions on which ways to
3 allocate the funds.

4 BOARD MEMBER PAPARIAN: Okay. Thank you.

5 BOARD CHAIR MOULTON-PATTERSON: And again, Dr.
6 Browning, thank you very much. Please give, send my
7 hello to Professor St. Germain, I got my Masters under
8 her program.

9 PROFESSOR BROWNING: I certainly will.

10 BOARD CHAIR MOULTON-PATTERSON: Small world,
11 isn't it?

12 PROFESSOR BROWNING: Thank you.

13 BOARD CHAIR MOULTON-PATTERSON: Thank you very
14 much. Okay. We'll go on to item 32, discussion of new
15 features and future directions for California waste
16 stream profiles. Presentation, Mr. Sitts.

17 MR. SITTS: Good afternoon, Madam Chair and
18 Board members. What we're going to do is have a real
19 quick tour through the new features and waste stream
20 profiles.

21 We've, while I'm presenting, in the interest of
22 time, I want to thank Darryl Petker who did the lion's
23 share of the work on this, as well as Doug Ralston, Chris
24 Allen, and Steve Barnett from the information management
25 branch, who really built the profiles. And without them

1 we wouldn't have them, they've done a lot of hard work to
2 get us where we are now.

3 BOARD CHAIR MOULTON-PATTERSON: Thank you very
4 much.

5 MR. SITTS: Okay. What we'll do here is do a
6 little tour through profiles. I kind of got a hypertour
7 that is in -- it's not working right now. Okay. The
8 first -- okay, I'm going to present over on the table.
9 Sorry about the technical difficulties here. Okay.

10 In April we, at the Board meeting we said that
11 there were some things identified in relation to
12 environmental justice that we could do in the next 120
13 days. Because this Board meeting is early in the month,
14 we actually got some of those things done within about
15 115 days.

16 The first one is tribal lands -- and I've got no
17 mouse response. Okay. Well that's going to be a little
18 difficult. I'm trying to get the mouse to work. I'm
19 trying to give you a tour of our website. Thank you.

20 And we, there we go. In our website, now we
21 have tribal lands shown, so that in jurisdiction
22 profiles, and in this example San Diego County, you can
23 select, instead of the jurisdiction of San Diego, you can
24 select tribal lands. And when you hit redraw the layers,
25 it shows all the tribal lands in San Diego County.

1 If you click identify and pick one of those, it
2 will show the name of the area Los Coyotes Reservation in
3 in this case, the tribe, and the tribe affiliation. And
4 that's all from information from the Department of
5 Housing and Community Development.

6 The next thing that we say we could bring
7 forward was census tract demographics based on the 1990
8 census. In this case you can pick, instead of
9 Sacramento, you can pick view the demographic information
10 from the 1990 census.

11 And the stuff I'm clicking through you can go to
12 the website and go through yourself, because it's all
13 live and functional and really nice.

14 So here you can see the different census tracts.
15 And if we put in landfills you can see, this is the
16 census tract in Sacramento. Again, if you click
17 identify, you can see that that's Sacramento County
18 landfill at Kiefer, and then the demographic information
19 from the 1990 census such as race, Hispanic, origin,
20 housing, income, that type of thing.

21 And I'm going through this fast so feel free to
22 stop me. One thing I did want to cover real quickly was
23 using census tract demographics can be kind of tricky.
24 Depending on where the facility is located and the type
25 of impacts you're looking at, it's not always

1 predictable, uniform, or related only to distance from a
2 site as far as potential impacts go.

3 In this example different residents in different
4 tracts could be affected depending on the media and the
5 potential impacts that you consider.

6 So if the facility is here, impacts could be in
7 different tracts just besides the one that the facility
8 is located in.

9 And tract residents aren't the only people who
10 could be affected by things; such as school kids coming
11 from tract H or employees coming from tract G. So it's
12 not always as simple as just saying, oh, now that we've
13 got the census tract and the facility we can have all the
14 answers.

15 The last thing that we talked about was
16 enhancing not only the information that we put out, but
17 enhancing people's ability to get information and supply
18 input to us, and to other people involved in decisions
19 related to solid waste.

20 And so in jurisdiction profiles, the contacts
21 tab which had been a placeholder until now, is now a much
22 more useful area. So that on the left side you can see
23 local contacts like the EA, enforcement agency, and the
24 annual reporting contact; and on the right side you can
25 see Board contacts, so that if someone out in the

1 community has some question, they can know who to get in
2 touch with, including e-mail addresses and everything
3 else.

4 Another feature that we recently added was
5 recycling market development zone loans and businesses.
6 And so you can go on and see that one real quick as well.

7 Here is the City of San Jose. If instead we
8 want to look at loans, businesses and the RMDZ itself,
9 you can go in and redraw the layers, and there is the
10 RMDZ. The little green dots are loans, and the little
11 brown ones are other businesses. Again, if you hit
12 identify, you can get the information on what that loan
13 was and that it's the San Jose recycling market
14 development zone.

15 We also added school sites and school districts
16 and -- oh, well, on the RMDZs I really wanted to thank
17 Raffy K and Corky Mau and their student for doing a lot
18 of data entry and a lot of checking of that data.

19 On all of these we had so much help from all the
20 other divisions and offices, I don't want to forget
21 anybody but I'm trying to be fast.

22 The school sites and districts we added to
23 jurisdiction profiles. So that in this example we've got
24 Colusa County, again instead of looking at the county
25 let's look at transfer stations, school districts and

1 schools, and hit redraw. And the little black lines are
2 the school districts, the red dots are the schools, and
3 that little green dot there is the transfer station.

4 So, again with the identifier you can see, well
5 gee, those two look close together, let's see what
6 facilities they are. And you can see that it's the
7 Maxwell Transfer Station and Maxwell High as well as the
8 continuation school in the Maxwell Unified School
9 District.

10 There are also now school profiles. And in all
11 the profiles we have different tabs that have different
12 types of information. This whole area I, we have to
13 thank Marshalle Graham from the Office of Local
14 Assistance. She's been working with Clint Whitney on the
15 school diversion project, Barstow Unified is actually one
16 of the school districts that have been participating and
17 have been very good participants with that. And they've
18 really helped, as well as Tricia Broderick's group,
19 Joanne Vorhies and Rebecca Williams, in particular.

20 So in this school district profile you've got
21 some overview. You can also go to the Barstow profile at
22 the Department of Education and see other information.

23 There's a lot of information that the Department
24 of Education keeps that we don't really want to keep
25 because that's not our primary business. But this

1 profile can act as a hub to get you to that other
2 information.

3 The next tab that we're going to look at is the
4 assistance tab, in this case for the Redwood City
5 Elementary School District. And you can see that they've
6 gotten grants from the Board for playground safety and
7 recycling, and they've also been involved in the teacher
8 training and curriculum program with closing the loop and
9 municipal solid waste.

10 And you can, again, get more information about
11 curricula training, or go see Jiminey Cricket at the
12 environmentality winners tab there.

13 On the diversion tab, it's kind of a misnomer
14 right now because it's just disposal information, but
15 we're adding diversion information to it as well as soon
16 as we get the diversion survey data in a place that we
17 can get it.

18 This gives you an estimate of kind of the
19 typical waste stream for a school, and it's for the Los
20 Angeles Unified School District.

21 It's more to point you in different areas of
22 different materials that they could have in significant
23 amounts. It's based on about a hundred schools that were
24 surveyed as part of a characterization project, so it's
25 not saying that school has exactly, or that district has

1 exactly 2.6 tons of corrugated cardboard, but it's
2 probably, well it would probably be worth looking at
3 cardboard there since you've got a pretty good amount.
4 And again the school profiles are up and running.

5 Under the contacts tab you can see district
6 contact, County Office of Education contact, and also you
7 can link to the Office of Education in that county. And
8 also the Board contacts within the Waste Management
9 Board, as well as our partners in environmental
10 education, and other public agency education sites.

11 The schools tab is the last in the school
12 profiles, and it just lists the schools and the
13 enrollment, and then you can get a little more
14 information in a map there.

15 The next thing I'm just going to cover pretty
16 quickly, and there is a handout although it's labeled
17 agenda item 31 instead of agenda item 32, and you can
18 blame the assistant director for that, I prepared that
19 table; it shows the concept for active and permitted
20 landfills which we've been working on, which Darryl
21 Petker has been leading.

22 And we've talked to a lot of people both
23 internally, over forty staff throughout the Board, a
24 whole lot of P and E folks, as well as a couple of
25 environmental groups, a couple of industry reps,

1 consultants, local government reps, and a pretty good
2 set; and next week we're going to, and we've already
3 talked to about eight LEAs; and next week Darryl is going
4 to be presenting at the LEA conference this concept, and
5 we're trying to get input on that.

6 So basically over the next pages then you can,
7 there are like twenty copies in the back as well. You
8 can see different information. And what we're trying to
9 do is also explore other things that we could do that are
10 a little different for profiles.

11 In this example you could click and view a copy
12 of a solid waste facilities permit. Again, more
13 information, different operations information now, and
14 perhaps being able to click and see the wasteshed for
15 this landfill.

16 Another would be perhaps looking at more
17 graphics, and viewing trend for disposal and alternative
18 daily cover use would be another approach.

19 There's also closure and financial information,
20 a map tab which is pretty similar to the maps we've seen.
21 And the good news is we're upgrading the software that
22 we're using for the mapping features, and so the maps
23 should be bigger, better, faster in the future.

24 Another option would be perhaps an aerial
25 photograph of the facility. So we're exploring all of

1 these things. Some of these things will take a little
2 more work than others.

3 Finally the contact tab, you've seen a contact
4 tab in schools and in local government, this would be a
5 similar one for facilities.

6 And with that, that's it.

7 Thank you.

8 We are happy to take comments from any and all.
9 On the landfill profiles, as I said, we're in the process
10 of developing those, those are still conceptual drafts,
11 so there's a lot of leeway on where we go with those.
12 There's different options for different parts, and we're
13 just trying to get as much feedback as we can.

14 And that is my presentation and I'd be happy to
15 field any questions.

16 BOARD CHAIR MOULTON-PATTERSON: Thank you so
17 much. It's just excellent. And we appreciate, John, all
18 of your work, and Darryl, and all of the people, and
19 Trish and everybody that helped with this. This is just
20 going to be a tremendous, of tremendous benefit for our
21 staff, for us, and for the public. And we really
22 appreciate all your work.

23 Any comments? We look forward to seeing more of
24 it. Thank you.

25 MR. SITTS: Thank you.

1 BOARD CHAIR MOULTON-PATTERSON: At this time
2 we're going to go to our last item, discussion of pending
3 legislation, an oral report by Ms. Mortensen.

4 MS. MORTENSEN: I'm Carroll Mortensen from the
5 Legislative Affairs Office, and I was going to provide a
6 brief update of the legislation that our office is
7 following.

8 And as you know, the legislature has been in
9 recess since last time I updated you at our July Board
10 meeting, so I thought I would give you an update of the
11 bills we know, what are called two year bills or bills
12 that are not likely to move this session; and also give
13 you an update on the bills that are moving and are likely
14 to be signed into law this session, and let you know
15 where those are in the process.

16 First let me cover the two year bills. The
17 first one that I wanted to tell you about was Senate Bill
18 243 by Senator Kuehl dealing with radioactive waste in
19 landfills. The bill had spot language in it dealing with
20 the issue. And we also have information now that
21 Assemblymember Keeley may be interested in this issue,
22 but we're not likely to see anything else happen on this
23 bill this year, but we'll probably be hearing about it
24 next year.

25 Senate Bill 648 authored by Sher dealing with

1 state agency procurement. This requires, as it's written
2 now, requires us to work with the Department of General
3 Services on updating the lists of recycled materials
4 available to state agencies. The language is somewhat
5 spot now, but we think this will definitely help us out
6 next year in getting procurement numbers up to state
7 agencies.

8 Senate Bill 1069 authored by Senator Chesbro is
9 a big plastics bill. And the way it's written now in
10 somewhat spot language is an advanced disposal fee for
11 all plastics. So we'll definitely be working hard on
12 that issue next year, I'm sure.

13 Assembly Bill 400 authored by Simitian dealing
14 with rubberized asphalt. Again, spot language at this
15 point, but hopefully we'll be able to work with the
16 author and Caltrans to get a lot more rubberized asphalt
17 use with that bill.

18 AB 709 authored by Wayne dealing with San Diego
19 burn dumps. Our staff as well as staff from the DTSC and
20 the Water Board have been working on the burn dump issue,
21 and Assemblymember Wayne is also very much more
22 interested in it, and we're likely to have a much more
23 fleshed out version of this bill next year.

24 AB 751 authored by Jackson is a mercury
25 containing lamps or fluorescent lamp bill as it's written

1 now, but it may deal with other universal wastes such as
2 batteries next year when it gets taken up again.

3 And the last two year bill that we've been
4 following is AB 1400, Cogdill, dealing with the Yosemite
5 compost facility, the pilot facility. And that's been
6 shelved for the remainder of this year, but we'll
7 probably see something on it next year.

8 Now the bills that are still moving. The top
9 priority for our office right now, and I'm sure with the
10 Board members, is Senate Bill 373 offered by Torlakson,
11 the school recycling bill.

12 It attempts to get schools to divert more waste,
13 and we want to add some work with the author to do some
14 work on standards and frameworks regarding environmental
15 education and to get the costs down on that bill. We're
16 continuing meetings with the author's office, and we
17 actually have one scheduled later on this week to deal
18 with that bill.

19 AB 1187, the Board sponsored bill that
20 Assemblymember Simitian is carrying for us -- oh, I'm
21 sorry, on 373 it's passed both the Assembly Natural
22 Resources and Education Committees, and it passed through
23 the Senate obviously with no problem, and it's now
24 referred to the Assembly Appropriations Committee, but no
25 date has been set for the hearing on that yet. I'm

1 sorry.

2 Okay. I'd like to go back to 1187, that's our
3 bill. The latest amendment that we got in was dealing
4 with the household hazardous waste and our spending
5 authority to get that increased to five million if the
6 funds are available, and that is moving along and is in
7 Senate Appropriations as well.

8 And the next two bills are, deal with some of
9 the regulation packages we heard during this month's
10 Board meeting. The first one is SB 88, Costa, dealing
11 with our authority over nuisance orders at compost
12 facilities.

13 As it's written right now, the regulations that
14 the Board considered this morning would need to be
15 adopted by April of 2003 for us to keep our authority
16 over nuisance odors and those, at those facilities.

17 And AB 173 authored by Chavez dealing with inert
18 waste, that also requires us to do regulations dealing
19 with the proper level of oversight and fees on inert
20 wastes.

21 And the last bill -- actually I have two more.
22 SB 1127, Karnette, deals with, it's written right now
23 dealing with polystyrene or Styrofoam. And we're working
24 with our staff and the office staff to incorporate that
25 into our existing RPPC white paper. And this bill is at

1 the Assembly third reading file, so it's pretty close to
2 going.

3 And the last, actually it's two bills, it's kind
4 of a set, it's AB 560 authored by Jackson, and AB 1201
5 offered by Pavley, they're both non-point source
6 pollution bills that in their current form would give the
7 Board the option of considering non-point source
8 pollution projects as they deal with used oil as grant
9 projects. So those are both in Senate Appropriations
10 Committee.

11 And that concludes my update, but I'll be happy
12 to answer any questions.

13 BOARD CHAIR MOULTON-PATTERSON: Thank you, Ms.
14 Mortensen.

15 Mr. Jones.

16 BOARD MEMBER JONES: Just a quick one. On the
17 Styrofoam bill, what does that bill, you know, what's its
18 goal?

19 MS. MORTENSEN: The author wants to do something
20 on Styrofoam. She has a district that she sees a lot of
21 Styrofoam cups and packing peanuts that wash up in her
22 district and kind of wants to get an idea of what's
23 happening with Styrofoam, what it's used for currently,
24 what the reuse and recycling options are. And it sounds
25 like most of that is going to be covered in the RPPC

1 white paper, so there shouldn't be too much of a cost or
2 too much of a deviation from what we were already doing.

3 BOARD MEMBER JONES: All right.

4 BOARD CHAIR MOULTON-PATTERSON: Thank you. And
5 Ms. Mortensen, we really appreciate all your fine work
6 and your report and the filling in, and thank you.

7 MS. MORTENSEN: No problem. My pleasure.

8 BOARD CHAIR MOULTON-PATTERSON: And before we go
9 to a final public comments I wanted to turn it over to
10 Mr. Medina.

11 BOARD MEMBER MEDINA: Thank you, Madam Chair.

12 Before we adjourn I did want to take a moment to
13 recognize Mary Farr who has loyally and steadfastly
14 served as my technical advisor for the past year. This
15 is Mary's last Board meeting in her current capacity, and
16 so I want to thank you, Mary, for doing an outstanding
17 job and for bringing me up to speed as a new Board
18 member.

19 I know that Patty, Arturo, and I will wish you
20 well in your new assignment, and that we will miss you,
21 but we're glad that you're still here working for the
22 Waste Board, and look forward to working with you.

23 (APPLAUSE.)

24 MS. FARR: Thank you.

25 BOARD CHAIR MOULTON-PATTERSON: Thank you very

1 much, Mary. And we look forward to working for you.

2 Any final comments, public comments before
3 adjournment?

4 Okay. This meeting is adjourned.

5 (Thereupon the foregoing meeting was
6 concluded at 4:09 p.m.)

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